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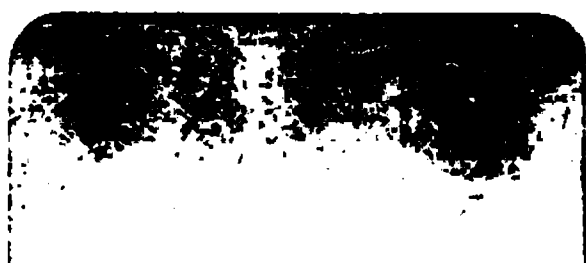
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REPORT

OF THE

TWENTY-SECOND ANNUAL MEETING

OF THE

American Bar Association

HELD AT

BUFFALO, NEW YORK,

*August 28, 29 and 30, 1899.*

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THE

TWENTY-THIRD ANNUAL MEETING

WILL BE HELD AT

SARATOGA SPRINGS, NEW YORK,

*On Wednesday, Thursday and Friday,*

*August 29, 30 and 31, 1900.*

APR 18 1900

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TRANSACTIONS  
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BUFFALO, NEW YORK,  
AUGUST 28, 29, AND 30, 1899.

*Monday, August 28, 1899.*

The Twenty-second Annual Meeting of the American Bar Association convened in the Common Council Chamber, in Buffalo, on Monday, August 28, 1899.<sup>1</sup>

The meeting was called to order by the former President, William Wirt Howe, of Louisiana, who introduced Charles F. Manderson, Vice-President for Nebraska, as presiding officer of the meeting in the absence of the President, Joseph H. Choate, of New York.

Charles F. Manderson, took the chair and introduced Sherman S. Rogers, of Buffalo.

Sherman S. Rogers:

Mr. President and gentlemen of the American Bar Association: The pleasant duty has been assigned me to welcome

<sup>1</sup> The Eighteenth Conference of the International Law Association was held at Buffalo in conjunction with the meeting of this Association. The International Law Association met on August 31 and September 1 and 2. A list of its members who were in attendance at both meetings will be found below in the List of Members Registered. Charles F. Manderson, Vice-President of the American Bar Association, was elected Honorary President of the International Law Association.

you, on behalf of the Bar of Buffalo, to this fortunate, and we hope you may find it so, this pleasant city. It is certainly fortunate in having you as its guests. We recognize that your Association, more than any other, represents to the country the profession of which we are members, and that the honorable service of the Association as well as its distinguished personnel, entitles it to speak upon the great questions of jurisprudence and legislation with which it may concern itself, with the dignity and seriousness that must attract attention and command respect.

'This is fast becoming a great convention city', so to speak; doubtless because of its central location, perhaps also because—you see I go back to that—it is a pleasant place in which to sojourn in the summer season—and partly because it has a phenomenal attraction in the great cataract so near our doors. But whatever may be the attractions that bring you to us at this time, we are most grateful to you for coming.

Your presence cannot fail to stimulate among our own members the laudable pride and ambition which every worthy lawyer has a right to feel in so great a profession. It ought also in some manner to rekindle in many of us, who in the engrossing cares of business life are apt to forget that the practice of the law is something more than a means to a livelihood, a little of the glow of aspiration we felt in earlier days, when ideas were more and money less.

I observe, Mr. President and gentlemen, that this is the twenty-first year of the life of your Association; that the public may know who have been its Presidents during these years, let me name them together:

James O. Broadhead, of Missouri.

Benjamin H. Bristow, of New York.

Edward J. Phelps, of Vermont.

Clarkson N. Potter, of New York.

Alexander R. Lawton, of Georgia.

Cortlandt Parker, of New Jersey.

John W. Stevenson, of Kentucky.



William Allen Butler, of New York.

Thomas J. Semmes, of Louisiana.

George G. Wright, of Iowa.

David Dudley Field, of New York.

Henry Hitchcock, of Missouri.

Simeon E. Baldwin, of Connecticut.

John F. Dillon, of New York.

J. Randolph Tucker, of Virginia.

Thomas M. Cooley, of Michigan.

James C. Carter, of New York.

Moorfield Storey, of Massachusetts.

James M. Woolworth, of Nebraska.

William Wirt Howe, of Louisiana.

Joseph H. Choate, of New York.

Sir, would it be possible to find twenty-one names more justly eminent in the records of any voluntary association, nay, of any Senate? With such men as leaders in this Association, the country has the assurance that here is a body which, to good government, public order, wise legislation, and the pure administration of justice, is and will continue to be a strong bulwark and support.

Again, Mr. President and gentlemen, I welcome you to our city. We are fain to believe that our Bar may not be wholly unknown to you. Certainly there has been in Buffalo, in earlier years, a Bar of which any city might be proud—some great lawyers and some great judges; many men who would have done honor to the country in any civil station. Our Bar of to-day, let me denote as distinguished for modesty—the lawyer's traditional virtue—and we trust they may add by your testimony, their hospitality.

The President:

I take pleasure in introducing Mr. Walter S. Logan, President of the New York State Bar Association.

Walter S. Logan, of New York:

Gentlemen of the American Bar Association: The New York State Bar Association does not propose to give the Buf-

falo Bar a monopoly in the way of welcoming. This morning we have been so royally welcomed here and Buffalo has impressed itself so much upon us, that you may have forgotten it, but nevertheless there is a little fringe of New York State outside of Buffalo.

In the name, then, of the New York State Bar Association I bid you greeting.

I am proud to be a lawyer. I claim for ours the primacy among professions. It occupies the same position towards other professions that the sun does towards the other bodies in the solar system.

The soldier and the sailor risk their lives in defence of the institutions and flag of their country, but it is the lawyer who formulates and maintains those institutions, and makes that flag worth saving.

The clergyman preaches from the pulpit the gospel of peace on earth, but it is the practical work of the lawyer that makes that peace possible.

The physician cures the physical ills of humanity, but in these days, when we have found that the highest work of the legislator is in enacting a proper sanitary code, the attorney for the health board saves more lives than a hundred doctors.

The engineer lays his iron rails under mountains, across plains and over continents, but he cannot put his pick into the ground, or lift his first shovelful of earth until the lawyer has got him his right of way.

Men of science delve deep into the mysteries of nature and try to wrest from unwilling earth the secrets of her processes; but it is the lawyer who defends the patentee and makes the discoveries of men of science valuable to themselves and available to the community.

In these days there are other professions—hundreds of them coming up every day, and on every side, but they all depend for their success upon their abiding faith that the lawyer will maintain existing institutions and protect vested rights.

The crowning triumph of our present civilization is in the successful establishment and maintenance of our existing municipal courts of justice. It is the perfection of these that makes property possible and life worth living. It is the existence of these and the respect paid to them by the community that makes social life and the perpetuation of social institutions practical. It is to our courts of justice more than to any other institution of modern civilization that we owe all that lifts modern man above the barbarity of his primitive ancestors. This is what the lawyer has done.

The one great step yet to be taken to complete the structure of our modern civilization and bring to man the full fruition of his untold generations of struggle, is the establishment of international tribunals for the settlement of differences between nations; the substitution of the international courts of justice in the place of the marshalling of soldiers upon tented fields; of the lawyer's brief for the dynamite gun; that step—the next step to be taken—must also be the work of lawyers.

Germans are proud of their Von Moltke, the soldier, but they are prouder still of Bismarck, the Chancellor.

Frenchmen honor their Napoleon, but I think they honor him as much for his code as for his victories in battle.

Men of Holland—no one would ever ask them to place any name, out of the multitude of great names in their proud history, above that of William the Silent. But we in this day and generation are coming to give them a double crown of glory, and to place side by side with that of the Prince of Orange the name of their own great Grotius.

Englishmen celebrate the destruction of the Armada and the fields of Blenheim and Waterloo and Trafalgar, but they celebrate with equal enthusiasm that green field of Runnymede where, one afternoon, the old barons of England wrested from the unwilling hand of King John, the Great Charter of Anglican Liberty.

And they celebrate, too, the memory of those brave and eloquent men in Parliament and out of it, who gave to England and to us, their and our bill of rights.

They celebrate the memory of John Hampden, who refused to pay ship money, more than they do that of Oliver Cromwell, who won the battle of Naseby.

They write in letters of ever living light the name of their William of Orange, the great grandson of a great grandfather. But they celebrate his memory not so much because he hurled back the legions of Louis of France, as because of what he did to found on its present enduring basis the everlasting structure of their free institutions.

The victory won by their Lord Grey in the passage of the Reform Bill was greater than that won by Wellington at Waterloo.

They honor Wilberforce as much as they honor Nelson, and no soldier or sailor of modern times occupies a place in their hearts equal to that occupied by Gladstone or Lord Chief Justice Russell.

We Americans honor the great name of our own great Washington; but history is now writing Washington at his greatest, not as the commander of the forces of the revolutionary war, but as chairman of the constitutional convention of 1789 and as first President of the United States.

Alexander Hamilton, side by side with Lafayette, stormed the forts at Yorktown, but we have forgotten that brave and brilliant exploit in our memory of what he did in establishing upon a firm and enduring foundation the government of the United States.

All over the land we rear monuments to the memory of Greene and Putnam and Sullivan and Morgan and other heroes of the Revolution; but John Marshall, the lawyer, did more to make the American Union than all of them.

Half of the American nation celebrates with loud enthusiasm the memory of Andrew Jackson, and the other half celebrates it as well, only a little more quietly; but it is Andrew Jackson, author of the nullification proclamation, rather than Andrew Jackson, the victor at New Orleans, whose memory we honor.

When we write the history of our civil war we cover with glory the names of Grant and Sherman and Sheridan and Farragut; but towering away above them all stands the sublime figure of Abraham Lincoln, the lawyer.

We are not done yet with welcoming home the heroes of our late Spanish war. We have showered our honors upon Sampson and Shafter and Schley and Roosevelt—and Dewey is coming home next month. But while we are honoring with well-deserved honors these men—our soldiers and our sailors—we do well not to forget what we owe to the cool head and steady hand of the supreme commander-in-chief of the army and navy of the United States—William McKinley, the lawyer.

And really the lawyer members of the Paris peace commission did quite as much for their country as the soldiers and sailors who fought in the war which their work brought to an end.

Again I welcome you to the State of New York—to the State of Governor Roosevelt. Our governor is distinguished along so many lines of greatness that we sometimes hardly know where to place him. We are still in doubt who it was that we elected governor last fall. Some men say that it was Col. Roosevelt of the Rough Riders. I did not vote for him, but I doubt it. I am inclined to think that it was President Roosevelt, of the National Civil Service Commission.

I welcome you to the State that has tempered the warlike thunders of Niagara and harnessed its power to the peaceful industries within its borders; to the State of Hamilton and Jay; of Kent and Van Buren; of Tilden and Cleveland; of Charles O'Connor and Joseph H. Choate; to the State that, whenever the flag of its country has been in danger, has sent its sons into the thickest of the fray; but that honors, as it honors no other men, its foremost men of peace.

The President:

Mr. Rogers, Mr. Logan, and through you, I address the citizens, and especially the Bar of Buffalo, the State Bar Association of New York, and the citizens of the Empire State.

On behalf of the American Bar Association, I return to you hearty thanks for this cordial greeting. As I looked into the smiling faces of my brethren during the eloquent welcome of Mr. Logan, I realized that this praise of our profession was most acceptable. I was glad, however, that the defendant or other side was not represented at this Bar. If we were to take testimony on that side it might be that our self-congratulation would not be so hearty. This love of one's own calling and this love of state, of locality, of the town in which one lives, is most admirable, and no one of us surely can object, even if there was some little exaggeration in the eloquent glorification of the City of Buffalo and of the great State of New York. It is a desirable quality—this that causes one to exalt one's own and to exult in it. It was very well expressed years ago by that delightful American poet with such a charming vein of humor, Oliver Wendell Holmes, who, when speaking of this love of one's own locality, said it was so pronounced, that down in a small town in Massachusetts they rendered the old poet thus: "All are but parts of one stupendous Hull." I do not know but that this remark of the citizens of the Town of Hull, Massachusetts, may have fitting place in the mouth of any citizens of this great Empire State. It is the leader. We who are of other States look to it as the leader. We who are members of local Bar Associations, whether County, District or State, look to the State Bar Association of New York as one that is to teach us the path that we should follow. I have no question but that the week we are to spend here will be one of great delight. This beautiful day is typical of this pleasant and delightful city, and even the roar of Niagara, were it at our very doors, could not exceed in volume the welcoming that has been given to us every moment of our stay within the gates of Buffalo.

Again, gentlemen, on behalf of the Association I thank you very heartily.

The President then delivered his Annual Address.

*(See the Appendix.)*



In connection with his address the President read the following letter from Joseph H. Choate, the President of the Association, now Ambassador to England.

LONDON, 17 August, '99.

MY DEAR SENATOR :

I regret very much my inability to attend the annual meeting of the American Bar Association, and to discharge the important duty imposed upon its President of delivering the annual address. But I am truly grateful to you, for so kindly undertaking that arduous service in my place.

I am more and more impressed with the importance of the work of the Association, which I find to be highly appreciated by judges and lawyers of the highest rank on this side of the Atlantic. The common law lies at the foundation of individual liberty in both countries alike, and whatever contributes to its wholesome administration is watched with great interest by all who follow our noble profession. The various efforts which the American Bar Association is making in the direction of legal and legislative reforms should be maintained with unfailing energy—and it is of the utmost importance that the committees to whom the study and promotion of these reforms are entrusted, should be selected with the most scrupulous care in the future as they have been in the past.

The study of comparative legislation, not only as between the states themselves, but as between our own legislation and that of the most enlightened foreign nations upon the same subjects, is a most promising field for the advancement of the public welfare; and the work of our committees and of the Association itself in this matter is observed by the profession abroad and by publicists everywhere with great interest.

The law's delays, which seem to be constantly on the increase, may well enjoy the earnest attention of the Association; and no opportunity should be lost to counteract the inevitable tendency to elaborate procedure and unnecessarily multiplied appeals, which cause a large proportion of these delays.

The development of professional education and training is the best fruit yet borne from the careful studies and labors of the Association; and the result, as exhibited in the thorough system and high standard of our best American law schools, challenges the administration of jurists and practicing lawyers everywhere. It is not, I think, too much to say that no other country offers equal facilities for the study of law as a science for a series of years, before a thought is given to practice, and I trust that the fruitful labors of your committee on Legal Education will never be relaxed.

With the warmest thanks to the Association for the great honor which it conferred upon me by electing me as its President for the past year, and with the best wishes for its continued usefulness and prosperity, I remain

Most truly yours

JOSEPH H. CHOATE.

To the

Honorable CHARLES F. MANDERSON.

Ansley Wilcox, of Buffalo, New York, then announced the invitation of the Buffalo Club to a reception on Tuesday evening, of the Country Club to an afternoon tea on Wednesday afternoon, and of the Erie County Bar Association to an excursion to Niagara Falls on Thursday afternoon and evening.

Adolph Moses, of Illinois:

With the permission of the Association, I desire to call attention to the part of the address delivered by the President this morning, which has reference to setting aside of a day to be known as John Marshall Day. The necessity for calling attention to it now is because it requires the appointment of a committee, and I wish to submit a motion with a brief statement which will not require more than five or six minutes, if I may be permitted to do so at this time.

The President:

Is there any objection to the gentleman from Illinois presenting this matter to the Association at this time? There does not seem to be any objection, and the gentleman may proceed.

Adolph Moses :

On behalf of the Illinois State Bar Association, Sir, I rise to advocate the celebration of the John Marshall Day, as outlined in the proposition submitted to and adopted by the Illinois State Bar Association on July 7th, 1899, which proposition has been mailed to every member of this Association. The details of the main proposition are merely tentative, and are subject to the action of this Association.

In the light of the many responses which have been placed before you in a pamphlet, entitled "John Marshall Day," and which is now officially lodged by me with the Secretary of this Association, it may be truly said that the movement for the celebration of that day has received such generous endorsement by eminent judges, lawyers and statesmen, as to warrant the statement that it has met with instant and warm recognition at the hands of the bench and bar of the United States. This result was confidently anticipated, for American lawyers are quick to respond to the invitation to do honor to the memory of the great Chief Justice, which will be honored as long as high purpose and true patriotism shall be venerated by mankind.

There is a precedent for this proposed action in the resolve of this Association in 1890, when the centennial day of the establishment of the Supreme Court of the United States was celebrated in the City of New York, under the auspices of the New York State Bar Association. A grateful nation has outwardly, although tardily, honored the memory of Marshall in the Capital where the Chief Justice sat so long and so majestically, by erecting a bronze statue, so that in the language of an honored jurist of the present generation, "the chief executive, legislator, suitor, lawyer, judge and citizen may, in all coming time, as they go to or return from the Capitol, be reminded of the thoughtful, but severely plain, features, calm majesty, placid courage, the lofty character, the inestimable public services of him whose unconstested and unenvied title is that of 'the Great Chief Justice.' "

“John Marshall Day” is not the first appeal which has been made to the American Bar on behalf of the Great Chief Justice. Soon after his death, at a meeting of the Philadelphia Bar, appropriate resolutions were passed recommending the co operation of the bar of the United States in erecting a monument to his memory at some suitable place in the City of Washington. A Committee of thirty was appointed under the name of “The Trustees of The Marshall Memorial Fund” to make arrangements with the bars of other States for carrying this resolution into effect.

We are not advised what success these early efforts had, but we know that many years passed before the monument was finally erected, and it was only completed with the aid of Congress, which, on March 10th, 1892, appropriated the sum of \$20,000 for this purpose. The Congressional Committee in connection with the Trustees of the Marshall Memorial Fund, contracted with and received from the artist, W. W. Story, (son of Joseph Story) a bronze statue of John Marshall, which was placed on the site selected near the West front of the Capitol, and which, on May 10th, 1884, was unveiled with appropriate ceremonies in the presence of both Houses of Congress, the chief officers of the government, the descendants of Marshall, and the general public. Chief Justice Waite and William Henry Rawle, of Philadelphia, were the distinguished orators of the day. These proceedings will be found in Volume 112, U. S. Rep., pp. 744-761.

Justice Joseph Story, writing to Richard Peters, (the Reporter of the Supreme Court), on July 24th, 1845, (eighteen days after the death of the Chief Justice), said: “As to the monument at Washington, I have not much hope that it can be brought about through the instrumentality of the bar of the United States. The interest is too distant and too loose to make the body of the bar act upon it with spirit. In public I shall promote with all my power a public monument in Washington; but I think it will not be accomplished. I think it

not proper that it should come from the bar exclusively, but I will cheerfully subscribe."

The statue was erected nearly fifty years thereafter, but the bar to whom this appeal is directed, is larger, and perhaps more enterprising, than the bar of the earlier period, and it is fondly hoped that success may crown the second effort to do honor to the memory of Chief Justice Marshall, by the united bar of America. There is another mode of commemoration, not in bronze, but by way of appeal to the minds and hearts of mankind—an appeal for a day of contemplation on behalf of the great profession, by which it may be called from labor to refreshment in the indulgence in noble and patriotic sentiments. Centennial days are the milestones in a nation's history, which measure its advance and growth. Happy the nation which can offer an inspiring character for the contemplation and admiration of future generations. In Marshall we find the great magistrate, shaping and protecting regulated liberty in the light of the great lessons which the golden period of American history presents to mankind. For the period of thirty-four years his brilliant intellect and admirable virtues constituted a magnetic power which bound the orbs of our magnificent system of government together, while disturbing forces of party rivalry were hushed into silence.

It is true that no centennial day can add to Marshall's fame, for that belongs to the world. Such a day, however, may be of incalculable value to the present generation, and it is for this educational purpose that it is now presented to a generous profession, in whose hands the traditions of national greatness may be safely lodged for renewed contemplation. The educating influences of such a day are boundless, and must inevitably tend to elevate the spirit of both Bench and Bar.

It were needless on this occasion, and before this Association, to pronounce eulogies on the name of Marshall. This has been most eloquently done by many of his contemporaries—Story, Binney, Wirt and Hopkinson—and by Chief Justice Waite, Dillon, Phelps, Hitchcock and Rawle of the present

generation. May not the thought of Abraham Lincoln, born on the battlefield of Gettysburg, be remembered profitably at this time; that while we cannot add to Marshall's fame, we can dedicate ourselves anew to the principles of government which his master-mind developed as a part of the Constitutional history of this western nation,—for as the expounder of the Constitution of the United States, he stands unrivaled among American jurists.

If this centennial day shall find favor in the minds of the American bench and bar, then an opportunity will be presented to study again that interesting period of our history in which so many great men, benefactors of the race, were nurtured,—men who founded a government which, with all its occasional shortcomings, has earned the admiration of the world. The early problems which vexed the government-builders have been reasonably, and, we trust, finally, settled in the course of a century, but new problems are environing us at present, and they will continue to do so, problems which will compel the constant vigilance and unremitting patriotism of the people, in order that the jewel of liberty may remain untarnished in our possession.

We speak for the revival of that sturdy race of patriots and statesmen who successfully established liberty on this continent and handed it down for the benefit of future generations, in order that civilization might steadfastly treasure the rights of men.

At the beginning of the new century let the numerous and powerful legal profession of America take a wistful retrospect and contemplate, (if but for a day,) the great lessons which have been the determining factors in the establishment of government on this continent, by the people and of the people. No body of men can value this legacy more highly than those to whose hands is necessarily, and by common consent, entrusted the political and civil rights of the people.

In memorializing this Association I am speaking within proper limits when I say that this Association is a fair repre-



sentative and exponent of the American bar, its ambitions, aspirations and hopes, and to it, as an humble member of the bar, and as an instructed delegate of the Illinois State Bar Association, I present this memorial in behalf of the recognition of "John Marshall Day."

In asking for this recognition, we appeal to the patriotism and the intelligence of that great profession, which, since the era of civilization, has been charged with the duty of guarding the liberties and the rights of property of the people, and which, among its ennobling ideas, treasures the memory of the great Chief Justice, who so successfully labored in his high office to preserve the rights of the Nation, as well as of the States in blended harmony, and who taught us to appreciate what was aptly expressed by one of his successors, as "an indestructible Union of indestructible States."

"Marshall's fame" said Judge Story, "will flow on to the most distant ages. Even if the Constitution of this country should perish, his glorious judgments will still remain to instruct mankind until liberty shall cease to be a blessing and the science of jurisprudence shall vanish from the catalogue of human pursuits."

An earnest appeal is therefore submitted to you, members of the American Bar Association, to give to this generation the "John Marshall Day" herein petitioned for.

Therefore, Mr. Chairman and gentlemen, on behalf of the Delegates here present from the Illinois State Bar Association, I present this subject of a John Marshall Day and I move that that part of the address delivered by Senator Manderson, which treats of the subject, and certain correspondence and documents collected by Mr. Adolph Moses, be referred to a committee of fifteen members, with a request to report its conclusions to this Association.

The resolution was seconded and was adopted.

Burton Smith, of Georgia:

Mr. Chairman, I would like to know what the effect of voting on this motion is?

The President :

It is simply to refer the whole matter to a committee of fifteen, which committee shall report back to the Association at its meeting. That is all.

New members were then elected.

*(See List of New Members.)*

The President :

Election of the General Council is next in order. The provision of the Constitution is that one person shall be selected from each State as a member of the General Council, and the duties of the General Council are performed during the session of the Association. It is therefore very important that the Council should be filled with all possible speed. I suggest that members of States represented upon the floor hand in names of the General Council to the Secretary, and where a State is represented by but one person, I hope that no undue modesty will prevent that person from suggesting his own name.

A recess of ten minutes was then taken, after which the Secretary called the list of states for nominations.

Charles Claflin Allen, of Missouri :

Before the list is voted upon, Mr. Chairman, I desire to say that I think there are some states that have really practically gone by default because of a failure to understand the Secretary. The Chairman has stated that it is of the utmost importance that the members of the General Council should be persons who are present here, as far as possible. Now, I have in mind I think one state, at least, where the name was read of a gentlemen who is not present, and that is the state of Louisiana. The gentleman whose name was read is not present, and I therefore ask leave to substitute the name of Judge Howe, who is present.

The President :

The correction will be made.

A Member :

For Colorado the name of Mr. Campbell has been read. Mr. Campbell is not present, but Mr. Hugh Butler of Colorado is present, and I suggest that his name be substituted.

The President :

The name of Mr. Butler will be substituted. Are there any other changes or suggestions in relation to the membership of the General Council ?

Charles Claflin Allen, of Missouri :

I desire to ask whether Mr. M. M. Cohn, of Arkansas is present ?

The President :

He does not seem to be present.

Charles Claflin Allen :

I suggest then that the name of Judge U. M. Rose, of Arkansas, be substituted.

The President :

The substitution will be made. The election of the General Council will be postponed until this evening so that these vacancies can be filled and any other suggestions of changes can be made at that time.

The next business in order is the Report of the Secretary. John Hinkley, of Maryland, Secretary, read his Report.

The President :

The Report will be received and placed on file.

*(See the Report at end of the Minutes.)*

The President :

The Report of the Treasurer is next in order.

Francis Rawle, of Pennsylvania, Treasurer, read his Report.

The President :

This report will be received and referred to an auditing committee, and I will appoint as such *Auditing Committee* : Walter S. Logan, of New York, and Ralph W. Breckenridge, of Nebraska.

*(See the Report at end of the Minutes.)*

The President :

The Report of the Executive Committee is next in order.

The Report of the Executive Committee was read by the Secretary.

The President :

The Report will be received and placed on file.

*(See the Report at end of the Minutes.)*

The President :

The Secretary will read the list of Delegates accredited to this meeting of our Association.

*(See List of Delegates.)*

The President :

The Chair desires to make the following announcement :  
The *Reception Committee*, to be constantly on duty during the sessions of the meeting, will consist of: Charles Claflin Allen, of Missouri; William P. McRae, of Virginia; William P. Breen, of Indiana; James A. Cabell, of Virginia; Guy E. Farquhar, of Pennsylvania; David L. Withington, of California; George Whitelock, of Maryland.

Robert D. Benedict, of New York :

I move that the officers of the Association be directed to send a cable dispatch to our President, Hon. Joseph H. Choate, expressing our regret at his absence and our best wishes for his prosperity and his success in the duties of his high office.

The motion was seconded and was adopted.

The Association then adjourned until 8 o'clock P. M.

#### EVENING SESSION.

*Monday, August 28th, 1899, 8 P. M.*

The Acting President, Charles F. Manderson, of Nebraska, called the meeting to order.

The President :

The Chair would announce as a *Committee on Publications* : Charles Borchering, of New Jersey ; Ansley Wilcox, of New York ; John C. Gray, of Massachusetts ; James Hagerman, of Missouri ; Skipwith Wilmer, of Maryland.

*Also the following Committee under the Resolution of Mr. Moses, of Illinois* : Adolph Moses, of Illinois ; Henry St. George Tucker, of Virginia ; William Wirt Howe, of Louisiana , Robert D. Benedict, of New York ; William P. Breen, of Indiana , William L. January, of Michigan ; M. F. Dickinson, Jr., of Massachusetts ; David L. Withington, of California ; Henry C. Ranney, of Ohio ; Charles F. Libby, of Maine ; Selden P. Spencer, of Missouri ; Burton Smith, of Georgia ; R. M. Bashford, of Wisconsin ; S. P. Wolverton, of Pennsylvania ; Bartlett Tripp, of South Dakota.

This constitutes a Committee of fifteen, to which will be referred all papers relating to the resolution and memorial from the Illinois State Bar Association.

The Secretary will now read the names of the members of the General Council that have been submitted in order that the Association may act upon them.

The General Council was then elected.

*(See List of Officers at the end of the Minutes.)*

The President :

The paper that we are to listen to to-night is on the subject of "New Jersey and the Great Corporations," and I have great pleasure in now introducing Mr. Edward Q. Keasbey, of New Jersey.

Mr. Keasbey then read his paper.

*(See the Appendix.)*

Adolph Moses, of Illinois :

I would like to ask Mr. Keasbey a question. What are the conditions of the law of New Jersey if the state takes away the charter from an offending corporation ? Is it not true that the very same stockholders can the next day pay into the

treasury of New Jersey twenty-five dollars, or five hundred dollars, or one thousand dollars, and the state, without hindrance, will again confer chartered powers upon that offending corporation?

Edward Q. Keasbey:

I do not know of any such case. Do you ask me whether if the state takes away the charter, it can again charter the corporation?

Adolph Moses:

Yes. Cannot the same stockholders again organize and obtain a charter?

Edward Q. Keasbey:

Undoubtedly.

Adolph Moses:

Therefore the futility of the attempt on the part of the state to kill the corporation one day and give it life the next day.

Edward Q. Keasbey:

In that sense it would be entirely futile to take away the charter.

The Association then adjourned to Tuesday, August 29th, at 10 o'clock A. M.

## SECOND DAY.

*Tuesday, August 29, 1899, 10 A. M.*

The acting President, Charles F. Manderson, of Nebraska, called the meeting to order.

Additional new members were elected.

*(See List of New Members.)*



The President :

The Chair announces the following Committee on Dinner : Charles Claflin Allen, of Missouri ; Francis Rawle, of Pennsylvania ; Skipwith Wilmer, of Maryland ; Edward W. Frost, of Wisconsin ; James L. Quackenbush, of New York.

The address to which we are to listen this morning has for its subject, "The Power of the Government of the United States to Acquire and Hold Territories," and I have the honor of introducing Hon. William Lindsay, Senator from the State of Kentucky.

William Lindsay :

Mr. Chairman and gentlemen of the Association :

For the honor of having been selected to make your Annual Address on this notable occasion, it becomes my duty as it is my pleasure, to return my thanks to this Association, and especially to its Executive Committee through whom the selection was made.

Appreciating the statement made by your Chairman last evening, that time is of great value to this Association, I shall proceed at once to the discharge of the duty to which I have, through the partiality of this Association, been assigned.

The Annual Address was then delivered.

*(See the Appendix.)*

The President :

The next business in order is reports of Standing Committees. The first Committee on the programme is the Committee on Jurisprudence and Law Reform. Is there any report from that Committee ?

The Secretary :

That Committee has no report to make at present.

Burton Smith, of Georgia :

Mr. Chairman, I desire to offer a resolution making a slight change in the constitution of the Executive Committee, and the purpose of my resolution is to restore the Executive Committee practically to the position which it occupied twelve or

fourteen years ago. It is now composed of the President, the Ex-President, the Secretary and the Treasurer, *ex officio* members, and three elected members, the President being *ex officio* chairman of the committee. I have talked with many gentlemen coming from every part of the country, and the opinion is general that the President of the Association, by reason of his other onerous duties, has little time to devote to the position of chairman of this committee. Now the purpose of my resolution is to have the Secretary and the Treasurer still remain *ex officio* members of the committee, and to have five elected members, one of whom shall be elected chairman of the committee by this body. The real point of the resolution is to give us an executive committee, the chairman of which, being elected for that purpose, may devote more time to it than the President of the Association.

Everett P. Wheeler, of New York :

Mr. Chairman, I rise to a point of order.

The President :

The gentleman will state his point of order.

Everett P. Wheeler :

My point of order is that the resolution offered by the gentleman from Georgia is not proper at this time, for the reason that the only business now in order is reports of standing committees.

The President :

The point of order is well taken, and the gentleman from Georgia can only proceed by unanimous consent.

Burton Smith :

I think I can satisfy the Chair that I am in order.

The President :

Very well ; the Chair will give the gentleman from Georgia an opportunity to do so.

Burton Smith :

The rule to which the gentleman from New York refers, that the reports of standing committees is the only business in

order at this time, is simply a published order of business, not a rule of this Association.

Everett P. Wheeler :

Pardon me. It is one of the by-laws of the Association. There is a by-law—I cannot recall which one now—which makes it the order of business at this time to proceed with the reports of standing committees.

The President :

The Chair rules that the gentleman from Georgia may only proceed by the unanimous consent of the house. Is there any objection to the gentleman from Georgia presenting his resolution at this time ?

Everett P. Wheeler :

Yes, sir ; I object.

The President :

Objection being made, the gentleman from Georgia will have to give way, and the Chair will proceed to call the next standing committee.

The Committee on Judicial Administration and Remedial Procedure. Is there any report from that Committee ?

Robert D. Benedict, of New York :

No matter was referred specially to our Committee at the last meeting of the Association, and therefore we have no report to make at this time.

The President :

Is there any report from the Committee on Legal Education ?

George M. Sharp, of Maryland :

There is no report from that Committee.

The President :

The Committee on Commercial Law ?

Walter S. Logan, of New York :

The Committee on Commercial Law, to whom was referred last year the consideration of the bankrupt law, beg leave to submit the following report.

*(See the Report in the Appendix.)*

Walter S. Logan :

In connection with this report, I would like to state that if the work in relation to the bankrupt law is continued in the hands of this committee, the committee desire and invite suggestions, not only from mercantile bodies, but from every member of the Association. We feel that the bankrupt law is one of the most important subjects with which this body will have to deal in years to come, and if the Committee on Commercial Law is to be charged with the initiative of the work of the Association upon that subject, we desire the assistance and the co-operation of every member of the Association. We believe that this Association may, by concerted action, secure the enactment of a bankrupt law that will be as near perfection as it is possible to get legislation. I have letters from the chairmen of the committees of both houses of Congress, asking us to continue our work, and promising that they will give to any recommendation made by our committee, or this Association, the very highest consideration. I believe the work of the committee may be continued with the promise of beneficent results.

The President :

The report of the committee is received, and is before the Association.

Robert D. Benedict, of New York :

I move that the report be approved and adopted, and further, that the committee be instructed to continue its study and investigation of the practical working of the bankrupt law, and to report further thereon at the next meeting of the Association, with any amendments they may deem necessary to the perfection of the statute.

Everett P. Wheeler, of New York :

I second that motion.

The President :

It is moved and seconded that the report be adopted, the committee continued and requested to report to the next

meeting of this Association any amendments they may deem proper.

Rodney A. Mercur, of Pennsylvania :

Mr. Chairman, I offer as an amendment, that a special committee composed of seven members be created to report at the next annual meeting of this Association, what amendments or alterations, if any, are desired in the present bankrupt law.

The President :

The Chair begs to state that it does not think that a proper amendment to the motion that has been made.

Walter S. Logan :

Of course, if it is the will of this Association that the work which the committee has been engaged upon during the last year, should be transferred to a special committee, we certainly bow to the will of the Association, but speaking rather for the other members of the committee than for myself, I would say that it seems to me that the Committee on Commercial Law can be so constituted next year, if it is not this year, that it can give to that subject all the consideration it requires, and I believe the subject should be left in the hands of the Committee on Commercial Law and not transferred to any special committee.

The President :

There is before the house a motion of the gentleman from New York that the standing Committee on Commercial Law proceed with the consideration of the subject that it has already considered. The Chair will hold that the amendment suggested by Mr. Mercur is not a proper subsidiary motion and cannot be made at this time. The question therefore recurs on the motion of the gentleman from New York.

The motion was adopted.

The President :

The committee will continue the consideration of the subject.

The next in order is the report of the Committee on International Law. Is there any report from that Committee?

Everett P. Wheeler, of New York :

Mr. Chairman, there are several matters which have come before the Committee, and the Committee thought it advisable to report upon them separately.

In the first place, we received a communication from Thomas S. McClelland, of Chicago, drawing our attention to the defect which he thinks exists in the law in reference to the responsibility for torts committed on the high seas causing death. I move that that communication be referred to the Committee on Jurisprudence and Law Reform.

The motion was seconded and was adopted.

Everett P. Wheeler :

It seemed to your committee again that one of the most striking things that has ever occurred in the history of the profession, has been the conduct of one of its members in France during the last three years, and that it would be highly adapted "to promote the honor and dignity of the profession," which is one of the objects of the Association, if we should express our sympathy with him in the recent attack upon him and with his courage in the defense of his client. We did not feel that it would either be appropriate or right for us to express any opinion as to the merits of his cause, but as to his conduct and his suffering, it seemed to us that he was entitled to our sympathy and to a public expression of it. We therefore offer the following resolution :

*Resolved*, That the American Bar Association assure their professional brother, Maitre Labori, of their sympathy for his suffering from an assault upon him while in the discharge of his duty to his client, and express their appreciation of his steadfast courage in defending the cause of justice, which is the only safeguard for the honor of any profession, whether civil or military.

*Resolved*, That the Secretary transmit a copy of this resolution to Maitre Labori.

The resolution was seconded.

Burton Smith, of Georgia :

Do I understand, Mr. Chairman, that that resolution is offered now ?

The President :

Yes.

Burton Smith :

Then, sir, reciprocating the courtesy of my learned brother from New York, I desire to make the point that it is out of order.

The President :

The Chair rules the point of order not well taken, this being a part of the report of a standing committee. The gentleman from New York, who is the chairman of the committee, presents from that committee a report, and has moved, as a member of the Association, a resolution coming from that committee, and the Chair understood that the adoption of that resolution thus coming from the committee, was seconded, and will therefore state the question. It is moved and seconded that the resolution that has been read, be adopted.

Burton Smith :

I make the point that the report of a committee does not carry with it action upon that report. My recollection of the practice of this body has been that the reports are all received and thereafter action is taken upon them, and that therefore action upon reports involving intrinsic resolutions, or even extrinsic resolutions, are not in order.

The President :

The Chair would bow with all proper submission and modesty to any practice of the Association, but the reading of a report from a committee to a deliberative body concedes its reception, and when it is received, any motion concerning it is in order.

William A. Ketcham :

Do I understand from the Chair that this is a report of the Committee on International Law ?

The President :

Yes, sir.

William A. Ketcham :

Here is a recommendation, entirely proper to come, I suppose, under the head of miscellaneous business. What the shooting of a lawyer has to do with international law is beyond my comprehension, and I move to lay this portion of the report upon the table.

The motion to lay the resolution on the table was seconded, and adopted.

Everett P. Wheeler :

The subject which was referred to our Committee at the last meeting of the Association, has been very fully presented to the Association in the address of the Chairman, and in the address that has been made to us this morning. It is, perhaps inappropriate that, in presenting this report, I should enter into any discussion of that subject, and I only desire to say that the committee do not wish it to be understood that the fact that we do not discuss it in our report is any evidence that we concur in the sentiments that have been expressed. Our opinion unanimously was that the discussion here of the subject of the government of the Philippines would not be appropriate for this meeting. We therefore beg to present this report.

The President :

The report will be received and placed on file.

*(See the Report in the Appendix.)*

Everett P. Wheeler :

The report of the Committee on International Law upon the progress during the year of the cause of International Arbitration is as follows.

*(See the Report in the Appendix.)*

Mr. President :

The report being received, it will be placed on file, and the Chairman of the committee, as I understand it, moves the adoption of this resolution. Is that motion seconded?



The motion to adopt the resolution appended to the report, was seconded, and the resolution was adopted.

The President :

The next standing committee is the Committee on Grievances. Is there any member of that committee present ?

There does not seem to be any report from that committee. Therefore that will be passed.

The next standing committee is that on Obituaries. Is there any report from that Committee ?

The Secretary :

As chairman of the Obituary Committee, I beg to present the following report.

*(See the Report in the Appendix.)*

The President :

The report will be received and placed on file.

William Wirt Howe, of Louisiana :

I ask leave to present a resolution in connection with the report just read. May I read it at this time ?

The President :

Yes, sir.

William Wirt Howe :

*Whereas*, We have heard with profound sorrow of the recent death of Thomas J. Semmes, of Louisiana, a former president of this Association,

*Resolved*, That we hereby record our sense of unfeigned respect for the memory of our departed brother and beg leave to tender to his family our sympathy in their great bereavement.

*Resolved*, That the Secretary be directed to transmit a copy of these resolutions to the family of the deceased.

The resolution was seconded, and was adopted by a rising vote.

The President :

The Committee on Law Reporting is next in order. Has that Committee any report to make at this time ?

Edward Q. Keasbey, of New Jersey :

Mr. Chairman, your Committee on Law Reporting present the following report.

*(See the Report in the Appendix.)*

The President :

The report being received, it will be placed on file.

This closes the business for the morning session as outlined on the programme.

Arthur Steuart, of Maryland :

Mr. Chairman, we have finished with the business of the morning session rather early, and, as we have a great many reports of special committees this afternoon, I would suggest that we take them up now and fill in the time until one o'clock.

The President :

What is the pleasure of the meeting in that respect? Is there any objection to the proposition? The Chair hears none, and will therefore call the first committee, which is the Committee on Classification of the Law. Is that Committee ready to report? If not, it will be passed. I will ask the Secretary when that Committee last made a report?

The Secretary :

The Committee on Classification of Law has not made a report for several years. Last year, on page 31 of the proceedings, the committee was called and they said they were not ready to make any report, and nothing was done.

Edward A. Harriman, of Illinois :

I am a member of that committee, and I would say that no meeting has been called by our chairman.

The President :

It might be well to dispense with some of these special committees that appear to have no particular duty to perform. That is the reason the Chair made the inquiry it did of the Secretary. However, in the absence of any motion to dispense with the committee, the committee will be continued.

Next in order is the Committee on Indian Legislation.

Robert D. Benedict, of New York :

It seems to me that going on in this way there may be some misconception. Doubtless the members of these various committees have understood that they were not to be called until this afternoon, and I would suggest whether it would not be advisable for the Chair to inquire whether any of the subsequent committees are here ready to report.

The President :

The chair will call these committees again during the afternoon for their reports.

The next is the Committee on Uniform State Laws.

Next is the Committee on Federal Code of Criminal Procedure.

Next is the Committee on Patent Law.

Next is the Committee on Uniformity of Procedure and Comparative Law.

Francis B. James, of Ohio :

Mr. Chairman, I think that committee was discharged last year.

The Secretary :

The record shows that the committee was discharged from the consideration of the particular subject upon which it was engaged, and that is all. Therefore, I did not feel at liberty to consider that as an absolute discharge of the committee, and I listed the committee with the other committees.

The President :

Does the gentleman from Ohio move that the committee be dispensed with ?

Francis B. James :

I move you, sir, that the committee on Uniformity of Procedure and Comparative Law be dispensed with.

The motion was seconded and adopted.

The President :

The next in order is the Committee on Parole and Indeterminate Sentences of Prisoners.

Next is the Committee on Federal Courts.

Next is the Committee on Appeals from Orders Appointing Receivers.

A. J. McCrary, of Iowa :

I am a member of that committee, and I think that it was continued. Nothing was done at the short session of Congress respecting the matter the committee had in charge, and the committee has no report further than this to make.

The President :

The Committee will be continued.

C. L. Bartlett, of Georgia :

I hope something will be done in aid of the passage of that bill, Mr. Chairman. The bill has three times passed the House—a bill introduced by myself to the same end, and one known as the bill of this Association. The bill that the Association had drawn was recommended by the Judiciary Committee in the second session of the Fifty-fifth Congress. It passed the House without objection, and it was thought it would be passed by the Senate at the last session of the Fifty-fifth Congress. We have always been able to pass it in the House without much trouble. I think the committee should urge its passage, or, if necessary, appoint another committee to urge it before Congress.

Without desiring to detain this body on this subject, I desire to say that from the experience which some of us have had in such matters, when an appeal to the Appellate Court is prevented on applications for injunctions and appointments of receivers, by the courts simply appointing a receiver, this bill is a most necessary one. Those of us who have gone through that experience feel a great deal of interest in this measure, and I know from my acquaintance with the members of the House as a Representative, that the Judiciary Commit-

tee to be formed in the next Congress will be so constituted that it will be very easy to pass this bill, the former chairman of the Judiciary Committee will be the speaker, and I know that he favors it. If this Association will give its earnest support to the bill and authorize a committee to urge its passage so that the Senate shall understand how much it is needed, the effort to have this bill passed will succeed.

I have no motion to make as I am not upon the committee, but I simply make the suggestion that something ought to be done.

A member :

The committee has been in conference with a representative member of the Commission appointed under the Act of March 3, 1899, to revise and codify, among other things, the Judiciary Act, and that Commission has already embraced within their report the provision to which the gentleman refers, and I understand it has received favorable consideration.

I move that this special committee be continued with instructions to urge before both branches of Congress the relief desired in respect to the matter committed to them.

The motion was seconded.

A. J. McCrary :

In reply to that I would say that we were assured by both of the chairmen of the Judiciary Committees of the House and the Senate that it would not receive attention at the short session. It is true we procured the passage of the bill through the House at the prior session. For some reason, Senator Hoar, the chairman of the Senate Committee, while he said he was not opposing it, was not yet satisfied to bring it before his committee, and so we were unable at that time to secure the attention of the Judiciary Committee of the Senate. The war with Spain had just then broken out, and that was engaging every man's thought, but we were assured that it can and will receive attention.

The motion was adopted.

The President :

The Committee on Trade Marks is next in order. I believe the chairman of that committee has a report to make.

*(See the Report in the Appendix.)*

Lester L. Bond, of Illinois :

I move, Mr. Chairman, that the report of the committee be adopted as read, and that the committee be continued with instructions to take such action as may be necessary to secure the passage by Congress of the bill appended to the report.

E. B. Sherman, of Illinois :

I second that motion.

Francis Forbes, of New York :

Before the Association acts upon that motion, it should know that there is a Commission existing, appointed by the President of the United States, to draft a trade mark law. That Commission has not yet made its report, but it will probably do so at the next session of Congress. Such distinguished gentlemen as Judge Grosscup, of Chicago, and Mr. Greeley, of the Patent Office, are on that Commission. It seems to me that this Association, if it desires any legislation on the subject of trade marks passed at the next session of Congress, might well wait until that Commission has reported.

Lester L. Bond :

I am well aware of the fact that a Commission has been appointed to look after this matter and that it is composed of very eminent gentlemen. At the same time I think the committee of this Association might work in harmony with that Commission. There need be no conflict between them.

Francis Forbes :

The motion is, that this Association recommend the *particular* bill submitted by the committee. To recommend a particular bill is an exceedingly important action for the Association to take. I have not yet seen the bill and no copies are here.

E. B. Sherman :

The Committee appointed by this Association and to whose report we have just listened, is composed of gentlemen who are very eminent in the branch of the law relating to trade marks. The members of the Commission appointed by the President are also men equally familiar with that subject. Now, the intention of our committee was not to antagonize the Commission, but to supplement their efforts. The committee has made a careful study of this subject, and it seems to me there is no danger of any antagonism between it and the Commission. I am sure the Commission will gladly receive any suggestions made by the committee of this Association.

Arthur Steuart, of Maryland :

If I may be permitted to say a word, the committee that prepared this bill was entirely familiar with the existence of the Commission and entirely in sympathy with its work, but we know very well that any bill that is passed on this subject must be threshed out before the committees of Congress, and this committee thought it better that they should give to this subject the result of their best experience and formulate a bill which they could submit to this Association for its approval, and if it received the endorsement of this Association, then submit it to Congress. The Commission that has been appointed will study the subject and formulate a bill, I suppose, although at the time this Committee was first appointed the chairman of the Commission told me they did not propose to frame a bill covering the particular ground embraced within this bill. If they have changed their plans, then some little change in their report may exist; but that ought not to alter the action to be taken by this Association, and if this bill is a proper one, if this Association has confidence in its committee, then let this bill go to Congress with the endorsement of this Association.

Edward Q. Keasbey, of New Jersey :

It seems to me, gentlemen, that this Association ought to recognize the existence of this Commission. I do not know

exactly the form of this resolution and I am not prepared to vote for it as it stands. This is a subject of a great deal of importance, and it was set down on the programme for this afternoon, and therefore I move that the further consideration of this matter be postponed until this afternoon's session.

The motion postponing consideration till the afternoon session was seconded and was adopted.

The Association then adjourned until 2.30 o'clock P. M.

#### AFTERNOON SESSION.

*Tuesday, August 29, 1899, 2.30 P. M.*

The Acting President, Charles F. Manderson, of Nebraska, called the meeting to order.

The President :

We are to have the pleasure of hearing a paper read on the subject of "State Punishment of Crime," and I have great honor, as well as pleasure, in introducing Sir William R. Kennedy, a Judge of the High Court of Justice of England.

Mr. Justice Kennedy then read his paper.

*(See the Appendix.)*

E. T. Lovatt, of New York :

I move a rising vote of thanks to the distinguished gentleman who has read this very able paper in our presence.

The motion was seconded and was adopted by a rising vote.

Sir William R. Kennedy :

Mr. Chairman, ladies and gentlemen, I thank you cordially for the great pleasure your courtesy gives me.

Martin Dewey Follett, of Ohio :

Mr. Chairman, will you allow a word or two when you come to the report of the Committee on Parole and Indeterminate



Sentences of Prisoners, as the distinguished speaker referred in his paper to the experiment in this country in that regard. The Chairman of that Committee is now in England studying this very subject. It has been said that prison reform would never come from the lawyers, but when this report comes in it will be proved that this great reform has come from lawyers.

The President:

The Association will now resume the consideration of the pending business. The report of the Committee on Trade Marks having been received, it was moved by Mr. Bond, of Illinois, that the report of the committee as read be adopted, and the committee continued, with instructions to take such action as might be necessary to secure the passage by Congress of the bill appended to the report. That motion is now before the house.

Francis Forbes, of New York:

Mr. Chairman and gentlemen of the Association. Since recess I have had the opportunity of reading the bill, which it is proposed to approve, and which I see by the note at the bottom of page 4 was introduced in the House of Representatives, May 6th, 1897, by Mr. Hicks, referred to the Committee on Patents and ordered to be printed. It was introduced in the Senate, June 20th, 1898, by Mr. Platt, of Connecticut, referred to the Committee on Patents and ordered to be printed. Therefore it does not seem to be a new measure.

This bill, if properly considered by this body, must be considered in connection with these facts. There are two classes or kinds of registration of trade marks, as determined by their effects. One is where the registration is attributive of property in a mark, and the other where the registration is merely declaratory of a claim to property in a mark. This distinction is of vital importance and of the very first rank. In countries like Germany, for example, where the registration and not user creates the right, an American mark not already registered there may be taken to the registration office by a stranger to the mark and it will be registered to him although

he may have used it only for a day, and when registered all claims by the first user to that mark will be extinguished. The registration is said to be attributive of property because it gives the right. A mere bureau officer passes upon the question whether the mark is, or is not, registrable and therefore a good trade mark. In France registration is merely declaratory of a claim of property. A person cannot bring a suit unless he has registered his mark in advance in the proper office. It is received without question, and there is virtually no examination. Whenever the mark is infringed the court determines whether or not it is a lawful trade mark.

These distinctions are very important. They are recognized and have been debated the world over. They are not known here on account of our procedure under the common law. We recognize the first user as entitled to the trade mark and registration is optional and declaratory merely.

By this bill we propose a change from a registration declaratory of property in a mark, as now, to a registration which shall be for practical purposes attributive of property in a mark. At least, that is the way I read it. Section 3, Page 6 says: "That if upon examination it shall appear that the alleged trade mark for any reason whatever does not constitute a proper trade mark, \* \* \* registration shall be refused," that is, the Patent Office can pass upon the question of whether it is a trade mark or not. If you turn to Section 5, page 8, you will find that it says: "That in an application for such registration the Commissioner of Patents shall decide the presumptive lawfulness of claim to the alleged trade mark." In the existing law the meaning of these words is disputed, but in this bill they mean that the Commissioner shall decide, as in the case of a patent.

Arthur Steuart:

Not at all.

Francis Forbes:

Well, it reads so to me. The Commissioner of Patents has decided that under the language in the present law he has the

right to determine what alleged marks are trade marks and what are not. Then in Section 9, the proposed bill says "That the registration of a trade mark under the provisions of this act shall be *prima facie* evidence of ownership." What does ownership here mean?

I do not think that I ought to speak further on the subject, because I am interested in it in another connection. It seems to me that I have shown to the members of the Association that we should proceed slowly. We should not make a mistake in any application that we may make to Congress, and so fritter away our influence before that body. A new trade mark law is desirable and I am anxious that the Association should say so, but I think that it is perilous to the influence of the Association to approve a proposed law making great changes in the existing laws, without full discussion and knowledge of the subject by all the members.

Arthur Steuart:

I desire to say that this bill has been very carefully drawn to accomplish the object which we have in view, of preserving all trade mark rights at common law as they exist to-day or as they may exist hereafter. The registration provided for by this bill is a registration which creates only a presumption of ownership and is not declaratory of ownership. In section 3, the Commissioner of Patents is authorized to determine, upon such evidence as may be before him, the presumptive lawfulness of the trade mark; not to declare it absolutely. Section 9 provides that the registration of a trade mark under the provisions of this act shall be *prima facie* evidence of ownership, subject to be rebutted by anybody who has prior rights and can prove prior adoption and use. The registration, therefore, gives certain rights with reference to the remedy, but creates no rights with reference to the trade mark.

Albert H. Walker, of Connecticut:

I am not a member of the committee which prepared this bill, nor am I a member of the Commission. I occupy an impartial position, and I will endeavor, in one or two minutes,

to explain to the Association the situation as I understand it. Prior to 1882 there was upon our statute books a Federal trade mark law, which authorized the registration of trade marks in the patent office, if those marks were used in commerce in the United States. In 1882, the Supreme Court of the United States decided that trade mark law to be unconstitutional, as having no warrant in the constitution—as being broader than any power conferred upon Congress. The power conferred upon Congress, as we all know, is confined to regulating commerce with foreign nations and between the states, and with Indian tribes. After that statute was swept away, Congress ventured to enact another statute, and instead of making one broader than the Constitution, it made one narrower than the Constitution, and confined the right to register trade marks to trade marks used in foreign commerce, and in commerce with Indian tribes, not conferring any right upon anybody to register a trade mark used in commerce between the states. It is defective, mainly in that it does not attend at all to the subject of trade marks which are used in inter-state commerce, and falls short of the constitutional power, and, as I think, of the constitutional duty, of Congress in that behalf.

This bill has for its primary object, the remedying of that evil and the supplying of that defect, and authorizing the registration of trade marks which are used in inter-state commerce, even if those trade marks are not used in foreign commerce, or in commerce with the Indian tribes. Now, that reformation is needed, and the administration of justice loudly calls for the supplying of that defect.

The next great object aimed at by this bill is to apply a sufficient sanction for the violation of trade marks. At present, a person is subject to an action at law, and he may also be enjoined by a bill in equity, for violation. Those two remedies are applicable enough, where the violation is an innocent one, and made without any intent to counterfeit; but where, as happens in a great many cases, a wrong-doer absolutely counterfeits the very trade mark registered, with intent to palm off

his goods as being the genuine, then neither of those remedies is effective. The action at law is not effective, because those counterfeiters are usually irresponsible and judgments cannot be collected against them. The injunction is not effective, because it only puts a stop to further counterfeiting, and visits no penalty for the wrong already done. The only remedy is to enact a penal statute, which shall prescribe a punishment for that, as being a crime or as being a misdemeanor. This bill accomplishes that result, by providing that those people who counterfeit the trade marks of others wilfully, shall be punished by fine or imprisonment, or both.

The bill has been thoroughly considered by the gentlemen who have signed the report. They are among the most able and distinguished patent lawyers in the United States; and they are exceptionally well qualified to consider these matters of technical interest and importance. Therefore, this Association will not be venturing upon dangerous ground, if it adopts the work of the committee during the past year, but will be doing a necessary and a safe thing.

Now let me speak of the Commission that was appointed by the President. Ten or fifteen years ago, there was an international convention entered into between the United States and several of the European powers, with a view to regulating the rights of owners of industrial property. In pursuance of that international convention, it became the duty of Congress so to adjust its laws in respect to trade marks, as to fit them to foreign laws upon the subject. That duty has never been attempted, much less performed. A year ago the President appointed a Commission, consisting of Mr. Forbes, of New York, Judge Grosscup, of Chicago, and Mr. Greeley, Assistant Commissioner of Patents, under an act of Congress which authorized the Commission so to reform the trade mark laws as to make them fit the foreign trade mark laws. That Commission is expected to report next winter; but their report will have no necessary conflict with this bill, because this bill contemplates the amendment of our laws so as to make them con-

form to our own notions of justice and public policy in the United States; and when those laws are thus amended, it may be within the domain of the Commission to make that adjustment. Otherwise, I know there is no conflict between the labors of the Commission and the labors of this Committee.

I sincerely hope that the labors of this committee, which have been faithfully performed and with great ability, will be adopted by this Association, and that the resolution offered by Mr. Bond of Chicago will be adopted.

William L. Putnam, of Massachusetts:

I have been very much interested in this subject, and in the remarks of the gentlemen in regard to this bill. It seems to me, however, that there is a great deal of force in Mr. Forbes' suggestion that we should go very slowly. There is a Commission appointed by the President, and the bill prepared by that commission may or may not coincide with the bill prepared by our committee.

What is the exact evil which it is required to remedy? There is no doubt that the civil remedies both at common law and in equity are very satisfactory at present. We can go into court and get injunctions against all kinds of infringements, not merely trade mark infringements, but imitations of geographical names, forms of packages, colors and other indicia, which could not be registered. Now, the object of this bill is to give a criminal remedy. That criminal remedy may be sought in either of two ways. It may be done, as is done in the English Merchandise Mark Act, by providing that any one who tries to pass off one set of goods for another, with criminal intentions, shall be punished, or it may be done by providing for a system of registration, and punishing only the imitators of registered marks. If the criminal remedy is confined to those marks which are registered, you have a bill which is similar to the bill which is proposed here.

Personally, I am convinced that a trade mark should not be likened to a patent. An action for preventing imitations of trade marks is essentially an action for preventing fraud. A

patent is essentially granted to create a temporary property in a man in his discovery or invention. There is a vast distinction.

This matter, I think, had better be left to the working out of the present laws, without immediate assistance from statutes, and instead of basing any criminal remedy on registration at Washington, let it be based on a criminal intention to imitate.

A specific objection to this statute lies in this, as Mr. Forbes pointed out: It provides that when any trade mark is registered under this act, the person who registers it will have the *prima facie* title. That is all right as far as the complainant is concerned. But suppose the complainant is the Waltham Watch Company, for example, which has some trade marks which cannot be registered, but are of immense value to them, and somebody registers a mark similar, and that infringer is sued, and he says "I have a registered mark." On the demand for a preliminary injunction, he sets that up as a defense. It would be a serious defense on a motion for a preliminary injunction.

There is another ground on which this statute may lead to trouble. Of course these marks registered at Washington have to be carefully described as registered, and it has been held in patent cases, and sometimes in trade mark cases, that everything that is not specifically claimed as part of the trade mark, is abandoned to the public. Now, there are a great many things in the get-up of goods which cannot be specifically claimed and which therefore cannot be registered under this statute, and which, if registration under this statute were attempted, might be regarded as being abandoned to the public, thereby preventing the redress which Mr. Steuart intends to secure.

It seems to me that the purpose of this bill could be accomplished very much more simply by extending the present statute to cover cases of inter-state commerce and by providing for a criminal remedy in case of any criminal attempt to deceive.

I therefore move that the matter be laid on the table to await the next meeting of this Association, the Committee being continued for that purpose.

Edward Q. Keasbey, of New Jersey :

I was going to suggest as an amendment to this resolution, that instead of accepting the report and instead of resolving that we ask Congress for the passage of this bill, we say that we accept the report and recommend the passage of appropriate legislation.

William L. Putnam :

That would be acceptable to me, and I will withdraw my motion and second Mr. Keasbey's suggestion.

The Secretary :

The resolution now reads :

Moved that the report of the committee be adopted as read, and that the committee be continued with instructions to take such action as may be necessary to secure the passage of the bill appended to the report.

The amendment would make it read :

That the report of the committee be adopted as read, and that the committee be continued with instructions to take such action as may be necessary to secure the passage by Congress of appropriate legislation.

The President :

The question before the house is, the amendment to the motion made by Mr. Bond, of Illinois.

Lester L. Bond :

I will accept the amendment that has been made.

Arthur Steuart :

Before the gentleman accepts that amendment I would like to be heard on it. I desire to say that this bill does not differ from the present law in any way, except so far as inter-state commerce is concerned, and the granting of a criminal remedy. There is no more attributive force in this bill, if it should be enacted, then there is in the act of 1881 as it stands on the



statute books at the present time. The evils which my brother Putnam has pointed out, if they could exist under this bill, would exist to-day under the existing law. No more force or effect will be given by legislation under this bill than is to-day given by registration under the existing act, and the only thing that this bill does is to carry the remedy a little further, permit the registration of trade marks used in inter-state commerce, and grant a criminal remedy for the crime of forgery. That is all. There surely can be no extension of evil, and there can be no limitation upon trade mark rights at common law because those rights are expressly reserved by the language of the bill in broader terms than they are now reserved by the present act.

The President :

The mover of the resolution accepts the amendment. Does the seconder accept the amendment also ?

Walter S. Logan, of New York :

I sincerely hope the amendment will not be accepted. I object to it. It seems to me we ought to accept the work of this committee, if at all, as they have prepared it, and that we should not attempt to emasculate their work. The bill has been very carefully prepared. It changes the law in only a very few respects, and it provides for a long-felt want.

I hope the bill as it stands, with the punctuation just as it is, will be accepted by this Association. I am sure there will be enough amendments and changes made in Congress, in spite of all we can do.

Albert H. Walker :

I move that the amendment be laid on the table.

Walter S. Logan :

If that motion prevails it will carry the whole subject with it.

The President :

That is so.

Albert H. Walker :

I did not think of that. If that is the case, I will withdraw my motion.

The President :

The question recurs on the amendment to the motion.

The amendment was lost.

The President :

The amendment is lost. The question is now on the original motion.

The motion was adopted.

The President :

The next Committee is the Committee on Industrial Property and International Negotiation. Is that Committee ready to report ?

Francis Forbes, of New York :

Mr. Chairman and gentlemen. Your Committee begs leave to submit the following report.

*(See the Report in the Appendix.)*

The President :

The report of the Committee being received, it will be placed on file.

Francis Forbes :

I did not know but there might be some discussion upon this. There is some question as to whether committees are continued. As this conference is likely to set again and again this winter, I desire to offer the following resolution :

“ *Resolved*, That in view of the continuance of the Brussels Conference under the Convention for the Protection of Industrial Property, concluded at Paris, March 20, 1883, the Committee appointed at the last meeting of the Association on Industrial Property and International Negotiation be continued with direction to report at the next meeting of the Association.”

The resolution was seconded and was adopted.

The President :

Next in order is the Committee on Title to Real Estate.

David L. Withington, of California:

In the absence of the Chairman of this Committee, it becomes my duty to present the following report.

*(See the Report in the Appendix.)*

Walter S. Logan, of New York:

I offer the following resolution in reference to the bill proposed by Mr. Withington:

*“Resolved, That the report of the Special Committee on Title to Real Estate be approved and adopted, and that this Association advocate the passage of the bill by Congress proposed by such committee, and that this committee be continued and instructed to advocate, in the name of the Association, the passage of such bill.*

William A. Ketcham, of Indiana:

I desire to offer an amendment to that. I move to recommit the proposed bill to the committee with instructions to prepare an amendment making it obligatory upon the proper officer to file a statement of such taxes with the clerk of the said United States Court.

There is no provision in the bill as it was sent out, making it obligatory or conferring any power upon the officer to file a statement with the clerk. A voluntary filing of that statement with the clerk without any requirement by law that the officer shall file it or shall be required to file the statement, will be of no force whatever. It will simply be the voluntary action of an individual, and it will not create a lien. The result of it will be that the United States will be deprived, or may be deprived, of the revenue that it is proper that it should receive from those sources.

The President:

What you propose seems to be in the nature of a substitute.

William A. Ketcham:

No, sir; it is simply in the way of an amendment, a safeguard, as it were, to the government.

The President :

The question is on the motion to recommit to the Committee with instructions. Are you ready for the question.

David L. Withington :

I beg the indulgence of the Association for the privilege of stating that under the existing provisions of law there are an immense number of taxes, chiefly internal revenue in character, which are a lien as they stand. If the amendment suggested by the gentleman from Indiana be adopted, it would impose a very great labor upon the Collectors of Internal Revenue throughout the United States. They would have to file all their taxes every month, and the length of the document which they would have to file would impose a serious burden upon them. This bill was prepared after consultation with some of the Collectors of Internal Revenue. It is but one section of the revised statutes, and has to be construed with regard to other sections. The point suggested by the gentleman is covered by the language of the act, "The officer charged with the collection of the tax." This is but one step in the proceedings. There the initiation of the proceeding is provided for carefully. I think the law point taken by the gentleman is not well taken in view of the other provisions, although this act standing by itself might be open to the exception.

William A. Ketcham :

Is there any provision in any other section of the revised statutes or of any statute of the United States that requires the officer charged with the collection of the tax to file with the Clerk of the District Court of the United States this statement?

David L. Withington :

There is none, and, under the act as it stands now, he is not required to file a statement anywhere.

William A. Ketcham :

Then, as a proposition of law, do I understand you to say that a voluntary action by an officer not required to file a statement, would give and preserve a lien?

David L. Withington :

As a proposition of law it seems to me that if he is charged with the collection of this tax, if it is made a lien and an exception is made by law, if he complies with that exception, it will not be a voluntary act; he will be proceeding under the law and availing himself of that provision. The initiation of it is with the Commissioner of Internal Revenue at Washington. The reason why the words "officer charged with the collection of the tax" are used, is, so that in every instance it will not be necessary to get direct authority from the Commissioner of Internal Revenue at Washington so that the local officer under a general direction may file these statements without a specific direction in each case.

M. F. Dickinson, Jr., of Massachusetts :

Before the question is put, I wish to suggest another amendment. It seems to me there is an absence of any requirement here for a proper description of the real estate to be affected by this bill. I would suggest that after the word "containing" in the twentieth line, there be inserted the words "a substantial description of the property." So that it would read: A statement containing a substantial description of the property in the name of the person promising to pay.

The President :

That would be legitimate as a part of the instruction to the committee.

F. H. Busbee, of North Carolina :

I think the whole matter ought to be recommitted to the committee.

David L. Withington :

As a member of the committee, although I have endeavored to give this some consideration, I have no objection to a recommitment. There should be some amendment to this provision of the statute so that these secret liens can be abolished. The internal revenue officers themselves admit that. I have no objection to the recommitment.

Walter S. Logan :

I would suggest that the amendments that have been proposed, be put in writing. Personally I have no objection to an amendment which recommitts the matter to the committee with power to advocate in Congress the passage of such a bill as the committee may upon reconsideration formulate. I do object to the matter going over another year, because I think this thing ought to be settled at the coming Congress.

Adolph Moses, of Illinois :

Might not the committee consider this matter and report to-morrow morning?

Walter S. Logan :

Mr. Withington is the committee; he is the only member of the committee here. Whether he can consider it and report to-morrow morning, is for him to say.

The President :

The Chair did not understand that there was any limitation whatever on the time within which the committee should report, and that the only instruction was that contained in the motion made by the gentleman from Indiana. The other way arises in the nature of suggestions to the committee. The Chair suggests that a general motion to recommit, with these suggestions made to the committee, would enable the committee to dispose of it speedily.

William A. Ketcham :

I will modify my motion, and move that the matter be recommitted to the committee with instructions to report to-morrow morning the amendments that have been suggested.

The proposition is that if any collection officer of the United States Government is to do something that he is not required to do by law, he is different in that respect from most officers who draw salaries from the government merely as administrative officers, and if the government is to be deprived of its revenue because of the non action of a particular officer, it seems to me that the law ought to point out the duty that the

officer should perform in order that the interests of the government may be protected.

Everett P. Wheeler, of New York :

Let me say a word on behalf of the *bona fide* purchaser. The government of the United States has not been slow about collecting its taxes, nor particularly tender in its manner of collecting them, and it seems to me that when we are discussing the remote possibility that a few dollars may escape Uncle Sam's treasury, we ought to consider the actual likelihood that some *bona fide* investor in real estate, either by way of mortgage or conveyance, should find it all swept from under his feet by some ancient tax that had been overlooked or neglected. The picture of a great government with an over-flowing treasury, collecting hundreds of millions annually, seeking to deprive an individual who has invested perhaps his all in a little piece of real estate and finds it swept away from him by the marshal's powerful hand, is one that should make us disinclined to support the arguments that have been advanced in favor of requiring every collector to file such a notice of lien. The rights of the government are safe enough without that. The statute gives the lien. The saving clause protects the *bona fide* purchaser. Why is not the government safe with its lien as against the original debtor, who ought to pay ?

Addison Brown, of New York :

I beg the indulgence of the Association for a moment, for I think that there are one or two considerations which have not been adverted to either in the report or in the discussion which has thus far been had upon it. If they have not been considered by the committee, I trust they will be, whether the report is finally submitted to-morrow or next year.

This amendment obviously contemplates alone the interest of the *bona fide* purchaser or encumbrancer. Evidently no regard is paid to the interest of the United States. The motive of the amendment is to prevent the collection of ancient dues to the prejudice of purchasers or encumbrancers without notice.

I think the first objection to the report as a whole, is, that it goes far beyond the announced purpose. I do not myself think that a bill in this shape would ever pass Congress. Congress, in imposing duties for taxes for revenue, intends that those taxes shall be collected, and the government ordinarily is not required to take other proceedings to preserve the lien which the tax law creates. Is it not sufficient for the protection of long subsequent *bona fide* purchasers and encumbrancers, so far as is contemplated by this amendment, that after a certain lapse of time, any harm which may accrue from the enforcement of ancient liens should be prevented by a requirement that they should be registered in this manner after that time? A large portion of the taxes which are due upon property are no doubt paid within the period required by law, and as to them there is never any need of registration at all in the special manner here proposed.

We have had suits of this character in New York City, but they are not many. This amendment would seem to require that every officer charged with the collection of these taxes should at once, or as soon as possible, file a list of all these taxes in the office of the Clerk of the District Court, in the form in which they would there be required to be registered. If the amendment prevails, you see at once that you have to act upon a very large number of these taxes, and you will have a vast number of these papers to be filed, and this act requires that the clerk shall enter these papers upon a book to be kept for that purpose. You are imposing here also an onerous duty upon the District Clerks. It will require additional employees in order to attend to that business. The Clerk is not paid by the government; he is paid in fees, and he has to do this work at his own expense. There is no provision to compensate him for the work. Is that right? Many of the clerks are badly paid; they cannot collect fees enough to reach the limit allowed by law. You are imposing a very substantial addition to the clerk's duties, and yet you give him nothing in return. I think it would be very objectionable if it were required that all



this should be done. If the amendment proposed were limited to such taxes as remain in default after a certain period, I think nine-tenths of them would disappear. A purchaser of property which is affected by a tax like this, which relates, I believe, largely to the manufacture of spirits and tobacco, usually acquaints himself with the business that has been carried on in the property, or should do so, at least, and he is thus put on his guard against internal revenue taxes.

I would request the committee, if it has not already considered these points, to do so, and particularly whether the object of this bill will not be very well accomplished if, for instance, registry were required only for any liens unpaid after two years, or three years, or some other fixed time, there being no necessity of having a record of most of such taxes, and not to require this new, vast and cumbersome system of registration to be adopted.

At this point the President requested Simeon E. Baldwin, of Connecticut, to take the chair.

Charles F. Manderson, of Nebraska:

I think the bill as suggested is open to some degree of criticism. I doubt very much, I was about to say, the propriety, but that is not the term I ought to use—I doubt the advisability of formulating bills for presentation to Congress. I think where a matter that needs remedy is called to the attention of Congress or its committee by memorial or petition, that in the usual case a better result is obtained. Now, take this matter in point. Here we have a bill prepared by the committee, undoubtedly after very careful consideration. You have heard the criticisms upon it. There would be difficulty, perhaps, in getting a member either of the Senate or of the House, to introduce that bill. He might do it with the black eye that is occasionally inflicted upon bills, by saying that it is introduced by request, and that would probably be the end of the matter, but where, coming from this Association, there is the instruction to one of its committees that in its name it shall memorialize Congress, and in proper petition set forth the evil

to be remedied, that memorial goes to the appropriate committee in the Senate, and there at least, it receives higher consideration than a bill which is introduced by request.

The government of the United States is at times a most cruel creditor and a most dishonest debtor. I think no man who has had much experience in Congressional halls will dispute the fact that if one has a claim against the government, that needs the tender mercies of the Congress of the United States for its payment, he had better destroy all evidences of indebtedness, to the end that future generations and his personal representatives may not be tormented throughout their lives in the effort to obtain collection of the claim. Years ago there came to my notice a most outrageous action on the part of the general government where it was a creditor. A man who thirty or forty years before had gone upon the bond of an Indian Agent supposed that the accounts of the Indian Agent had all been settled and disposed of, and to his astonishment a suit was instituted against him for a large amount of money, running into many thousands of dollars, for a defalcation by this Indian Agent committed over thirty years before. The Indian Agent himself was dead, all the other bondsmen were dead, and this man was precipitated into bankruptcy in his old age by the government of the United States. The matter being called to my attention I was instrumental in introducing the bill providing for a statute of limitations on the government of the United States, in that class of bonds, which exists to-day. Now, there ought to be a statute of limitations on the government as to the collection of these revenue taxes. I agree with Mr. Wheeler, of New York, that it is far more important that we should look after the interests of innocent purchasers of real estate than that we should look out for the government. It looks out for itself. My idea is that better than the presentation of a bill, would be that the Committee be instructed to memorialize Congress in the name of the American Bar Association, calling attention to the evil shown in the case of the *United States vs. Snyder*, 149 U. S. 210,

and urging appropriate legislation to remedy the evils complained of, with the suggestion that authority be given, under proper safeguards to the collectors of internal revenue, that they may guard the interests of the government by the filing of proper liens, that a statute of limitations be applied as to these liens, and that where there is no notice filed with the clerks of the United States Courts, an innocent purchaser shall be protected. I think if we proceed by that method it will have more effect upon Congressional committees than if we frame for them a bill that will be open to criticism.

The Chairman :

Gentlemen, the question before the house is the motion to recommit this report to the Committee. Is the suggestion of the gentleman from Nebraska acceptable to the gentleman who offered the original motion.

Walter S. Logan :

As the mover of the original motion, I will accept the substitute offered by the gentleman from Nebraska.

The Chairman :

Is there any objection on the part of any member of the house to the substitution ?

David L. Withington :

As an individual member of the committee, I am in entire sympathy with the remarks of the gentleman from Nebraska. I thought the bill was all right, but I so thoroughly agree with what has been said by Senator Manderson as to the method of reaching Congress, that I will accept his suggestions.

The Chairman :

Then it is understood that the motion before the house is that contained in the remarks made by the gentleman from Nebraska ? The motion, I believe, was made by the gentleman from Indiana, Mr. Ketcham.

William A. Ketcham :

I am content to accept the substitute of Senator Manderson.

The substitute resolution was as follows :

*Resolved*, That the Committee on Title to Real Estate be instructed to memorialize Congress in the name of the American Bar Association, calling attention to the evils shown in the case of *U. S. vs. Snyder*, 149 U. S. 210, and urge the proper legislation to remedy the evils complained of.

The question was put upon this resolution and it was adopted.

The Acting President, Charles F. Manderson, then resumed the chair.

The President :

The Chair takes the liberty of calling the committees that were passed this morning, to see if there is any report to be made from any of them.

Is there any report from the Committee on Classification of the Law ?

Is there any report from the Committee on Indian Legislation ?

Is there any report from the Committee on Uniform State Laws ?

Lyman D. Brewster, of Connecticut :

Mr. Chairman, the Committee on Uniform State Laws presents the following brief report.

*(See the Report in the Appendix.)*

Lyman D. Brewster :

I move that the report be accepted and the committee continued.

The President :

The report is accepted and placed on file. The proper motion is that the report be adopted and the committee continued.

• Everett P. Wheeler :

I make that motion.

The motion was seconded and was adopted.

The President :

Is there any report from the Committee on Criminal Procedure ?

Is there any report from the Committee on Patent Law ?

Edmund Wetmore, of New York :

The Patent Committee, without a formal report, ask that they may have the authorization from the Association to obtain, if possible, proper legislation from Congress to correct certain evils. For instance, in the District of Columbia, in which the Patent Office is situated, a wife under the law as it is now administered, cannot testify for or against her husband in litigated proceedings in the Patent Office. We believe there is no reason why that restriction should longer continue. It is the cause of some embarrassment, and if the Association agrees with us, we should like to have authority to ask for legislation to correct that. I therefore move that the committee be given that authority.

The motion was seconded, and was adopted.

The President :

Is there any report from the Special Committee on Uniformity of Procedure and Comparative Law ?

Is there any report from the Special Committee on Parole and Indeterminate Sentences of Prisoners ?

John H. Stiness, of Rhode Island :

I have a short report to make.

*(See the Report in the Appendix.)*

The President :

The report is received and placed on file.

John H. Stiness :

I move the adoption of the report, and the resolution therein contained.

The motion was adopted.

The President :

Is there any report from the Committee on Federal Courts ?

Edmund Wetmore, of New York :

We have a short report.

*(See the Report in the Appendix.)*

The President :

The report is received and placed on file.

Edmund Wetmore :

I move its adoption, and of the recommendation contained in it.

The motion was seconded, and was adopted.

The President :

Is there any other business to come before the Association at this time ?

Adolph Moses, of Illinois :

The Special Committee on John Marshall Day is ready to submit a report.

The President :

The report will be received now.

Adolph Moses :

Then read the report.

*(See the Report in the Appendix.)*

Adolph Moses :

It has been misconceived on the part of some members of the Association, that this is intended to be a yearly day. There was never any such thought. It is this one day to be observed and no other day, unless in the judgment of future generations they choose to make it otherwise. In other words, the President, the Vice-President of each state association, and the General Council are supposed to co-operate with this Committee of fifty-one, thus relieving the American Bar Association entirely from all trouble in the matter, except to designate the things that have been suggested in this report. Every member of this Association is very likely a member of some state bar association or some city or county bar association, and

the entire observance of this day will lie in the hands of these local associations.

With this explanation, I move the adoption of the report, hoping that some gentleman will move the insertion, which has occurred to me since the report was drawn, namely, the insertion of the "District of Columbia," which was inadvertently omitted.

The President :

That is such an evident omission that I think the Chairman of the committee may take the liberty of inserting it himself.

Gentleman, the report being received, will be placed on file. Is there a second to the motion to adopt the report ?

Simeon E. Baldwin, of Connecticut :

I second the motion to adopt the report, and I would couple with it the suggestion that the report be printed and its consideration made the order of the day for 12 o'clock to-morrow.

The President :

Then the report is before the house, and its consideration will be made the order of the day for 12 o'clock to-morrow.

The Association then adjourned until Wednesday morning, August 30, at 10 o'clock.

### THIRD DAY.

*Wednesday, August 30, 1899, 10 A. M.*

The Acting President, Charles F. Manderson, of Nebraska, called the meeting to order.

The President :

There being no unfinished business from the previous day, the first in order is nominations of officers.

George P. Wanty, of Michigan, Chairman of the General Council :

Gentlemen of the American Bar Association, the General Council have the honor to place in nomination for officers of this Association for the ensuing year, the following :

For President, Charles F. Manderson, of Nebraska.

For Secretary, John Hinkley, of Maryland.

For Treasurer, Francis Rawle, of Pennsylvania.

For members of the Executive Committee, Edmund Wetmore, of New York ; Charles Noble Gregory, of Wisconsin ; U. M. Rose, of Arkansas.

For Vice-Presidents and members of Local Councils for the different states and territories, the following.

*(See List of Officers Elected.)*

David L. Withington, of California :

In the election of the General Council, Henry S. Gregory was elected as the member from Idaho. He has requested that Col. Woods be substituted in his place, and I therefore make that motion.

The President :

In the absence of objection, the change will be made as requested without any motion.

Additional new members were then elected.

*(See List of New Members.)*

The President :

Is there any unfinished business ?

Burton Smith, of Georgia :

Mr. Chairman, I have a resolution to offer, the purpose of which is simply to put upon the Executive Committee, instead of the President and the ex-President, whose engagements usually occupy them too much, two other elective members to be selected by this body after nomination by the General Council. My resolution is as follows :

To amend Article III of the Constitution by striking out the words "an Executive Committee" and the words there-



after, down to and including the word "committee" at the bottom of that page, and inserting in lieu thereof, the words "an Executive Committee which shall consist of seven members, five of whom shall be elected by the Association, and of which the Secretary and the Treasurer shall be, *ex-officio*, members, provided that no elective member of the Committee shall be chosen for more than three years in succession."

William H. Clark, of Texas:

Mr. President, I second the resolution.

The President:

Article III of the Constitution will be read as it stands, and then the same article will be read as it is proposed to amend it.

The Secretary:

The portion of Article III in question is as follows:

"An Executive Committee, which shall consist of the President, the last ex-President, the Secretary and the Treasurer, all of whom shall be *ex officio* members, together with three other members to be chosen by the Association, but no member shall be eligible to such choice more than three years in succession, and the President, and, in his absence, the ex-President, shall be the chairman of the Committee."

The amendment proposed by the gentleman from Georgia is to amend Article III of the Constitution by striking out the words "an Executive Committee," and all words thereafter, down to and including the word "Committee" at the bottom of that page, and inserting in lieu thereof the words "an Executive Committee which shall consist of seven members, five of whom shall be elected by the Association, and of which the Secretary and Treasurer shall be *ex officio* members, provided that no elective member of the Committee shall be chosen for more than three years in succession."

The President:

The Secretary will read Article 10 of the Constitution, which provides how that instrument may be amended.

The Secretary (reading):

"This Constitution may be altered or amended by a vote of three-fourths of the members present at any Annual Meeting, but no such change shall be made at any meeting at which less than thirty members are present."

The President:

It being evident that thirty members are present, and a three-fourths vote being required, is the Association ready for the question?

Robert D. Benedict, of New York:

I should like to ask the mover of this amendment, why the proposition is to strike out the President of the Association from the Executive Committee? It seems to me very desirable that the President of the Association should remain on the Executive Committee.

William Wirt Howe, of Louisiana:

I would also like to ask why it is deemed advisable to leave off from the Executive Committee the out-going President of the Association?

A Member:

I would like to inquire whether this resolution is not bound to lie over one day before it can be considered?

The President:

There seems to be no provision of that sort.

E. T. Lovatt, of New York:

I move to lay this proposed amendment on the table.

The motion to lay on the table was seconded, and was carried by a vote of 75 ayes to 45 noes.

Robert D. Benedict:

I now move to amend Article 3 by striking out from the clause "together with three other members" the word "*three*" and inserting "*five*."

E. T. Lovatt, of New York:

I second that motion.

The President:

It is moved and seconded that Article 3 be amended by striking out from the clause "together with three other members," the word "three," and inserting the word "five."

Burton Smith:

Having no pride of opinion as to verbiage, and being desirous, with the other gentlemen who favored the amendment to increase this Committee, it affords me great pleasure to support the motion just made by the gentleman from New York.

The motion was adopted by a vote of 119 ayes to 11 noes.

Arthur Steuart, of Maryland:

I desire to offer an amendment to the by-laws. In explanation I would say that in 1894 an amendment—

William A. Ketcham, of Indiana:

Will the gentleman kindly yield the floor to me for one moment?

Arthur Steuart:

Certainly, sir.

William A. Ketcham:

By the kindness of the gentleman who has yielded the floor, I now move that the matter of the additional members of the Executive Committee be referred to the General Council, so that they may consider it and report back to the Association immediately.

The President:

If there is no objection to that course being pursued, the matter may be so referred. There being no objection, it is so referred.

Arthur Steuart:

In 1894, as I was saying, an amendment to the by-laws was made as an addition to Section 14, which read: "A Section of the Association to be known as the Section of Patent Law, is hereby established;" and a special committee was appointed at the same session to consider desired changes in the patent law and to report to a succeeding meeting. The Section was sub-

sequently organized, and the Committee was appointed and made its report, and a bill was framed which was passed by Congress. Now it is desirable that that Committee should be made a standing committee, and also that the work of the Section should include trade marks and copyrights.

I therefore move that the by-laws be amended by inserting in Section 14, line 23, after "patent," the words, "trade mark and copyright;" also, line 27, after "patents," the words, "trade marks and copyrights;" also, in line 28, after "patents" the words "trade marks and copyrights," and that a resolution be adopted in this form;

*"Resolved, That there shall be a standing committee of fifteen on patent, trade mark and copyright law, which shall be appointed annually by the President from the members of the Patent Section."*

Stephen M. Hoye, of New York:

Mr. Chairman, I take great pleasure in seconding that amendment.

The President:

The Secretary will read the by-law as it stands, and also the by-law as it is proposed to be amended.

The Secretary read as requested.

Arthur Steuart:

The Chair has kindly called my attention to the fact that Article 3 of the Constitution provides for the creation of standing committees, and, in order to make a committee a standing committee, it is necessary to amend the Constitution.

I therefore move that the third article of the Constitution be amended by adding the words "on patent, trade mark and copyright law."

The President:

The Chair suggests to the gentleman from Maryland the advisability of striking out from the by-laws all that relates to the special committee on patent law, which will be the last five sections of the by-laws, and adding to article 3 of the Consti-

tution the words "on patents, trade marks and copyrights, a committee of fifteen," if it is desirable to have a committee of that number.

Arthur Steuart :

The provision of the by-laws does not relate to the organization of a patent committee. It relates to the Patent Section, which are two different things. The Patent Section is a deliberative body, and the committee is an executive body.

The President :

Then I think you are right.

Gentlemen, the question is on the motion to amend the by-laws.

The amendment to the by-laws was adopted.

The President :

Now the Secretary will read the proposed amendment to the Constitution.

The Secretary :

In the third article of the Constitution, where the list of committees is given, the proposal is to add to the list the words "on patent, trade mark and copyright law.

I would call the attention of Mr. Steuart to the fact that that would make a committee of five, however, and not a committee of fifteen, as he desires.

Arthur Steuart :

Just put in the words "a committee of fifteen."

The Secretary :

The Section now reads: "The following committee shall be appointed by the President, and consist of five each." Now I understand Mr. Steuart's suggestion to be "and a committee"—

Arthur Steuart :

I think Mr. Secretary, I would not do that. I think I would let it remain a committee of five.

The President :

The proposed amendment is to add after the words "on Law Digesting," the words "On Patent, Trade Marks and Copyright Law."

The amendment was adopted by a vote of 75 ayes to 10 noes.

The President :

Under the head of miscellaneous business the Chair lays before the Association the following letter received by him as Acting President of the Association.

The Secretary read the letter as follows :

THE CIVIC FEDERATION  
of Chicago

Chicago, Aug. 18, 1899.

HON. CHAS. F. MANDERSON,  
Acting Pres. National Bar Ass'n,  
Omaha, Neb.

*Dear Sir* :—The Civic Federation of Chicago has initiated a conference which is called to meet in this city Sept. 13-16 to discuss Combinations and Trusts,—their uses and abuses, embracing the subjects of transportation, labor, industrial and commercial combinations. The governors of thirty-five states are appointing seven delegates each to participate in the conference. The lists already received indicate that these delegations will be composed of representative men of different political parties. Large commercial bodies and national labor, agricultural and traveling men's organizations are also appointing delegates. Many governors, attorneys general and other state officers will participate in the conference and representatives of the Interstate Commerce and Industrial Commissions will be present.

A series of questions have been addressed to twenty thousand so-called trust combinations, labor and traveling men's organizations, wholesale merchants, contractors, lawyers, bankers and economists, asking for data and opinions on these

problems and the generous response being made assures the committee that it will be able to present some very valuable matter to the conference.

The object of the conference is purely educational. The local committee in charge of the arrangements is composed of representatives of all political parties and, as indicated on this letterhead, is chosen from the various walks of life. The committee has no ideas or schemes of any kind to place before the conference. Its members have different views on the problems to be discussed but are agreed on the proposition that a fair hearing should be given at the conference to all sides.

The Committee of Arrangements desires to invite your organization to send five delegates.

Yours very respectfully,

FRANKLIN H. HEAD, *President.*

RALPH M. EASLEY, *Secretary.*

The President :

What is the pleasure of the Association in regard to this communication ?

Stephen M. Hoyer, of New York :

I move that the communication be received with thanks and placed on file, and that the Chair appoint five delegates to attend that conference.

E. T. Lovatt, of New York :

I second that motion.

The President :

Is the Association ready for the question ?

Robert D. Benedict, of New York :

I move, as an amendment, that the Secretary be directed to send a response acknowledging the receipt of the communication, but expressing our view that it is not within the scope of the Association to send delegates to that conference.

Rodney A. Mercur, of Pennsylvania :

I second that motion.

The amendment was adopted.

The President :

The question is now on the motion as amended.

The amended motion was adopted.

The President :

Is there any further miscellaneous business ?

George Whitelock, of Maryland :

I have a resolution which I should like to offer, as follows :

“ *Resolved*, That the American Bar Association assure their professional brother, Maitre Labori, of their sympathy for his suffering from an assault upon him while in the discharge of his duty to his client, and express their appreciation of his steadfast courage and that this resolution be cabled to Maitre Labori, at Rennes, by the Secretary on behalf of the Association.”

The resolution was seconded.

George Whitelock, of Maryland :

Mr. Benedict, of New York, has asked me why I made some slight change in the text of the resolution as reported yesterday from the Committee on International Law. I did so at the suggestion of a member of the Association, for the reason that the original resolution committed this body to the proposition that the side of Dreyfus is the just side of the controversy at Rennes. The expression was “in vindicating the cause of justice, which is the only safeguard of the honor of any profession, whether civil or military.” It seemed to be the opinion of some of the members of the Association that this might be going rather too far and might perhaps react unfavorably upon the prisoner. Now whatever may have been the embarrassment here yesterday as to the proper moment and the proper head under which a motion of this kind should be offered, there can be no objection to the resolution itself. If there is to-day, in a tribunal sitting under the civil law or under our own more beneficent system, as we regard it, a hero in the profession of the law, that man is Maitre Labori, now defending the cause of Dreyfus, and I hope that this body may express its appreciation of the heroism which he has shown in the defense of his unfortunate client.



William A Ketcham, of Indiana :

I cannot but think it had been better if this matter had not come at all before this Association, but coming before this Association, it would be, as it seems to me, a matter of the greatest misfortune if it should go out that this Association was willing to condemn or unwilling to commend. With the American lawyer the knowledge that he is doing his duty by his profession and his client is all-sufficient ; he needs no commendation from a bar association or from any source. We are not so familiar with processes that obtain elsewhere, and some of us suppose that perhaps condemnation elsewhere will mean more than it means here ; and therefore, as the matter is before us in the manner in which it is now, and not creeping in under the tent because some committee had the right of way, I shall take pleasure in voting for the resolution.

James O. Crosby, of Iowa :

I should be very glad if we could pass this resolution and be sure of the effect that it would have, but the trial of Dreyfus is pending and this might re-act against him.

E. B. Sherman, of Illinois :

I should be very sorry if the American Bar Association was not ready to condemn the attempted assassination of a man engaged in the defense of his client, wherever or whoever he might be.

Selden P. Spencer, of Missouri :

If this were a question merely of our sympathy, that would be one thing. But this resolution, as it goes out to the world through the Press, means nothing more than placing upon our record an expression of our sympathy with one side of a case which is now in process of litigation and not yet decided.

F. H. Busbee, of North Carolina :

The resolution as it is now presented for the action of the Association differs from the one reported by the Committee yesterday in that there has been eliminated all references to the justice of the cause represented by Maitre Labori.

The trial now in progress at Rennes is one of supreme historical importance, and if in its progress a courageous advocate is shot in the back by a cowardly assassin, a tender of the sympathy of the American Bar Association cannot be misplaced. How could it be misunderstood, Mr. Chairman, when we recall the fact that the members of the court and the officers of the French General Staff themselves, extended to the stricken advocate their sincere sympathy and expressed their horror at the deed of the criminal?

George Whitelock :

It seems to me that the gentleman from Indiana has stated the true situation. If we had maintained silence upon this subject there would be no difficulty at all. Inasmuch, however, as the matter came up yesterday and the merits of the question were not discussed at all, but the resolution was laid on the table, I submit that the Association does not stand to-day in its proper attitude before the world. I have already seen an account in the Buffalo newspapers of this resolution, and I think that we have left ourselves in a position of misinterpretation. Therefore, I trust that the resolution in its present form will be adopted. The attempt has been made to strike out everything in the original which would indicate a purpose to support the cause of Dreyfus. The gentleman who last spoke has certainly stated our position with great lucidity. If the members of a military court, with all of their prejudice against the prisoner, could afford to rise and extend their hands to Maitre Labori when he came into court to resume, with the bullet still in his body, the defense of the prisoner, there can surely be no impropriety for this body of lawyers, bound to maintain the sanctity of judicial tribunals, to extend its sympathy to the courageous hero in France.

John B. Baskin, of Kentucky :

If there be any substance in the gentleman's objection that by this resolution we show sympathy with one side, I say it is far better that we should do that than, by rejecting the resolu-

tion, impliedly show sympathy to the other side. In other words, it is better to let the fact appear that we do sympathize with the prisoner, if that be the inference, than by rejecting the resolution, have it appear that we sympathize with the other side.

William H. Clark, of Texas :

If the trial of Dreyfus be a judicial proceeding, it seems to me that it is in very bad taste for the American Bar Association to attempt to pre-judge the case. If the trial of Dreyfus be a matter of military proceeding, then is it germane to the work of this Association? The American Bar Association should be slow in passing resolutions. Matters political should be eschewed. Labori, like all great lawyers, doubtless does not desire and certainly does not need public applause for his fearless advocacy in behalf of his client.

Hiram F. Stevens, of Minnesota :

On another occasion and in another presence, Mr. Chairman, I should take pleasure in supporting a resolution of this character, but it seems to me,—in view of what we all recognize,—that the American Bar Association has hitherto conducted itself as a conservative organization,—that we should not depart from the principles by which we have heretofore been governed, which we would be doing if we adopted this resolution. As individuals, we may entertain profound convictions of the prisoner's innocence, and as individuals we may so express ourselves to Maitre Labori, but as an association of American lawyers we cannot do that. It is very well for the members of the court in which Dreyfus is being tried to extend their sympathy to his counsel for the cowardly attack made upon him, because that action on their part cannot be misunderstood, and besides that is their prerogative. But what right have we, who are neither members of that court or citizens of that Republic, to interfere in the progress of the trial? I believe it would be a serious mistake to adopt this resolution; and I believe also that the world will understand that, while the

prisoner and his counsel have our sympathy, we cannot with propriety express it in this official form. Moreover, we have with us from several European Countries, delegates to the International Law Association, which is to be held here to-morrow, and for that reason especially this action which it is proposed to take, would hardly be proper.

E. T. Lovatt, of New York :

Mr. Chairman, many of us, if the last gentleman's remarks should have any effect here, would be cut off from the presentation by our vote of our sympathy and regard for the heroic work being done by Maitre Labori. We are not all delegates to the International Conference. When a man stands as high in his profession as Maitre Labori does and has such a dastardly attack committed upon him, it becomes our duty, as well as our pleasure, to give expression to our sympathy with him and our joy at his recovery from the wound. This is simply a body of lawyers in convention assembled, a body of men with hearts in their breasts, sending to a brother lawyer, a man with a heart in his body, a lawyer of profound learning and ability, an expression of the sympathy which the act of an assassin has called forth, not only from us, but from the entire civilized world. It is not an attempted interference with the course of the trial of Dreyfus in any respect. It strikes me that this is germane to this Association's objects,—to stand by a brother lawyer, no matter to what country he belongs. And, gentlemen, the firing of that shot by this assassin is not the only thing that makes Maitre Labori a hero. While he was preparing the case without any hope of remuneration, letters were constantly sent to him stating that he must expect to be attacked if he took up Capt. Dreyfus' defense. All the more, then, do we owe a vote of honor to the man who, without any fee, knowing his life was in danger, walked into the arena of justice to defend a man who he believed had been unjustly and unrighteously convicted. Let it go out throughout this country and to the world that this Bar Association, composed, with the exception of the speaker, of some of the grandest men

in America in our profession, stood cowardly by, afraid to assert what it knew to be right, and we shall be pointed at with scorn. All honor to the man of our profession who, in the teeth of such danger—danger that we in this country do not have to face, thank God—will stand up for his client without any reward excepting the approval of his conscience, and face that tribunal and plead the cause of his client without fear of man and asking no favor at the hands of anyone.

John B. Baskin :

Mr. Chairman, I want to offer an amendment. My amendment is, after the first two words in the resolution, to insert "without attempting to pass upon the merits of the case against Capt. Dreyfus."

The President :

The Secretary will read the resolution as it would stand if thus amended.

The Secretary (reading):

*Resolved*, That the American Bar Association, without attempting to pass upon the merits of the case against Capt. Dreyfus, assure their professional brother, Maitre Labori, of their sympathy for his suffering from an assault upon him while in the discharge of his duty to his client, and express their appreciation of his steadfast courage; and that this resolution be cabled to Maitre Labori, at Rennes, by the Secretary on behalf the Association.

E. T. Lovatt :

Mr. Chairman, I move that that resolution as amended be laid on the table.

Everett P. Wheeler, of New York :

Let me say, in support of the committee, that it was never at any time part of the intention of those who framed the original resolution, to express any opinion upon the merits of the controversy at Rennes. We all agreed that that would be unbecoming. For one, I am indebted to the gentlemen who have proposed these amendments which remove all possible

objection upon that score. But this is the point that I want to argue. We are citizens of the United States, it is true, but we are also in a very important sense, citizens of the world. One of our committees is charged with the duty of considering the subject of International Law, and there is no nation in the world that has made more important contributions to the science of International Law than the United States of America. What we have done in that respect has gained for us the confidence and the respect of the civilized world. The very fact that we have our independence here and are removed by the ocean from the countries of the Old World, has given to the expression of our opinion and judgment greater weight than if it had proceeded from any of the kingdoms or republics of the continent of Europe. Therefore it seems to me that, as lawyers, one of whose objects in associating is to uphold the honor of the profession of the law, we may properly do this thing. It seemed to a great many of us that we ought to do it, because this trial is not simply a trial of the man, or whether he should be acquitted or convicted. The all-important point is that a man ought not to be condemned upon evidence that was never submitted to him or to his counsel. It was on that ground that the highest French court reversed the judgment of the former Court-martial. It is to defend that great principle of justice which is sacred to every human being, that Maitre Labori has devoted some of the best years of his professional life, and we all know at what cost—at the cost of opposition, at great personal sacrifice, and finally, as the result has shown, at the peril of his own life. Under these circumstances what a cloud of witnesses have been looking on the struggle, and it seems to me that we ought as men and as lawyers to express our appreciation of the courage of a professional brother which has shed lustre upon the profession the world over. Is there anything in the long history of the profession, honorable as it is, ever since Cicero defended the rights of a Roman citizen against Verres, that is more creditable to it than the conduct of this French lawyer?

If this be so, why ought we not as independent Americans who are not entangled in this controversy and have no occasion to seek for military secrets from any foreign power, to express our sympathy with a man who has done what Labori has done?

Ernest T. Florance, of Louisiana:

There is very little doubt that the resolution as originally offered will be construed as committing this body to an opinion concerning the merits of the Dreyfus case. That question has been thrust upon us by the offering of this amendment, and from that conclusion we cannot possibly escape. With that inference from the original resolution, it seems to me that it would be doing about the most cruel act towards Capt. Dreyfus and his counsel if we should adopt the original resolution. We all know the protest on the part of the French press and the officers of the French army against foreign interference, and we must remember that this trial is not being conducted by lawyers, but by officers of the French army—

George Whitelock:

I desire to interrupt the gentleman with his permission, to say that I accept the amendment which has been offered. Therefore, having accepted the amendment, I do not consider in that aspect of the case that the original resolution is open for debate.

Ernest T. Florance:

The gentleman had not accepted the resolution when I arose, and therefore I submit that I am in order in speaking on the original resolution.

The President:

The Chair understands that the mover of the original resolution accepts the proposed amendment. Does the seconder of the original resolution also accept the amendment?

The seconder accepted the amendment.

The President:

Then the amendment is adopted into the original resolution, and the amended resolution is before the house.

E. W. Huffcut, of New York :

Mr. Chairman, I desire to offer this motion, That as the resolution which has been offered is outside the scope and object of this Association's work, it be laid upon the table.

The motion to lay the resolution on the table was seconded.

The President :

Gentlemen, it has been moved and seconded to lay the resolution on the table, and this motion is not debatable.

The motion to table the resolution was lost by a vote of 83 ayes to 104 noes.

Adolph Moses, of Illinois :

I believe that the opinion of the American Bar Association is still in process of fermentation. Therefore, not wishing to discuss the merits of so obvious a resolution, I wish to add to the state of information, the following. A few days ago Theodore Stanton, the European correspondent of the *Chicago Record*, a man of international reputation, cabled that the surprise at Rennes was universal at the fact that while the bars of all continental Europe had telegraphed their sympathy to Maitre Labori, not one word had been heard from America.

William Wirt Howe, of Louisiana :

I feel constrained to oppose this resolution, and solely upon this ground. I am sure that no man in this assembly can fail to have sympathy for the distinguished counsel of Capt. Dreyfus in this trial, but I remember how sensitive the French people are and what an extraordinary condition they are in in respect to this case, or this "affair," as they call it, and how sensitive are the military officers who compose that tribunal, and I firmly believe that any resolution of this kind, emanating from this body, will be considered by a great many of the French people and by all the members of that Court, as an improper interference with their deliberation and will be sure to recoil to the injury of Capt. Dreyfus.

Stephen M. Hoyer, of New York :

I think everything that could injure Capt. Dreyfus has been eliminated from this resolution. Now, it should not go out to



the world that the American Bar Association is a pack of cowards. If the American Bar Association does sympathize with Dreyfus and his counsel, it should not be afraid to place itself on record to that effect. Why should we not have the courage of our convictions? We all sympathize with Capt. Dreyfus and believe that an injustice is being done him, but we do not say so in this resolution; we are content to let time, which settles all things, settle that.

A. J. McCrary, of Iowa:

Cowardice is no part of American citizenship, and, as an American citizen, I have the fullest sympathy for the counsel of Capt. Dreyfus. We are not here in our organized capacity simply as American citizens. We are here as a representative body of American lawyers. A trial in a military court is proceeding in proper form, according to their judgment in France. Let us reverse the thing and suppose that Gen. Miles was courtmartialing one of his officers and a body of French lawyers should send into that court any sort of resolution. It would be considered an affront. As citizens of the United States let us, if we choose, send to Maitre Labori our personal sympathy. He has done no more, however, than any member of this Association would have done for a client. But he has been doing his work manfully, and he has been attacked by an assassin, and the attack upon him meets the reprobation of every good citizen; but as a member of this Association I say it would be a very improper thing for us to go out in the world and begin to counsel the nations of the earth.

F. H. Busbee, of North Carolina:

The objections to the passage of this resolution seem to be grouped under three heads: First, that the tribunal which is trying Dreyfus is a military court of a foreign power, and it would be out of place for the members of the American Bar Association to give utterance to any expression of sympathy for the counsel who has been brought to the very jaws of death on account of his appearance before that tribunal. It is said that the members of the court will resent any expression of

our good-will. Let us take a parallel case: Much public attention in America has been given to the case of Captain Carter, tried before a military court. If to-day Mr. MacVeagh, counsel for Captain Carter, were shot down because of his appearance for the defendant, and an association of French lawyers were to express their sympathy with the wounded man, is there a single man in America who would feel aggrieved?

A Court-martial is a legal and constitutional tribunal, and the fact that it is composed of army officers, does not render it any less a regular court.

Second: It is said that the object of our sympathy is a foreigner and an alien, and that we have nothing to do with his injury. We need not go beyond the pages of the heathen poet to be taught the lesson:

*"Nihil humani a me alienum puto."*

No lawyer, no member of the profession to which we all owe allegiance, in any part of the world, is beyond our sympathy and our affection.

*"One touch of nature makes the whole world kin."*

And to say that by extending the hand-clasp of sympathy to a counsel stricken down in the performance of his duty, is infringing upon the province of the court or criticising its members, or is an expression of opinion on the result, seems to me to be without foundation. To fail to do it, now that the subject has been brought before us and fully discussed, would be an act of cowardice of which the American Bar has never shown itself guilty.

Finally it is said that our action to-day may injure the cause of the unfortunate prisoner. If an expression of our sympathy, echoing that made by the members of the court themselves, can influence that tribunal to pronounce the defendant guilty, then his case is hopeless from the beginning. May God help him!

F. C. Dillard, of Texas:

It is to me a strange process of reasoning by which the conclusion is reached that the passing of this resolution is

the passing judgment on the merits of the Dreyfus case. To so hold is to declare that there is an indissoluble connection between the act of the assassin and the judgment of the tribunal now sitting in that case. I fail to understand this logic. Following the illustration of the gentleman from Iowa, suppose there was a prosecution before General Miles and a military tribunal, and suppose that our presiding officer were defending the criminal, and were shot down for faithfully doing his duty in such defense, would a resolution of sympathy with him from the bar of England or the bar of France be a passing on the merits of the case in which he was counsel? Surely not; and no more can a resolution of sympathy with Labori be held to be a pre-judgment of the merits of the Dreyfus case.

So long ago as when the Children of Promise went over into the goodly land to possess it, the captain of the hosts could not stand alone, but two of his brethren stood one on either side to uphold his hands until the going down of the sun and the winning of the battle. So should lawyers everywhere uphold the hands of their brethren when they are nobly engaged in the work of their profession. And may God forbid that the day shall ever come in any land under any flag or at any time when a lawyer who does his duty, even if it be in defending the worst criminal, and is stricken down for so doing, shall not receive a word of cheer and sympathy from his brethren in America.

The resolution was adopted by a vote of 130 ayes to 69 noes.

Hiram F. Stevens:

Mr. Chairman, I am sure we all appreciate very heartily the courtesies that have been so hospitably extended to us in this city, and, are thankful as we say at grace, for those which we are about to receive, at the hands of the Erie County Bar Association, and the citizens of Buffalo. As we shall have no opportunity after this session to express our thanks, I offer the following resolution:

*Resolved*, that the thanks of the American Bar Association be, and they are hereby tendered to the Erie County Bar and to the citizens of Buffalo for courtesies extended to the members of this Association.

The resolution was seconded, and was adopted by a rising vote.

Charles Claflin Allen, of Missouri :

In the same connection I desire to offer the following resolution :

*Resolved*, That the thanks of this Association be returned to the board of trustees of the City and County Hall, at Buffalo, and the Superintendent and employes for their kindness in extending to us the use of their building, and for the valuable services during our present meeting.

The resolution was seconded and was adopted.

F. M. Danaher, of New York :

Mr. Chairman, I rise to inquire if Mr. Stevens incorporated in his resolution of thanks, the name of the Buffalo Club, the Country Club, and the New York State Bar Association ?

Hiram F. Stevens :

I did not, as courtesies have been so numerous tendered and I assumed they were all covered under the head of "the citizens of Buffalo."

F. M. Danaher :

I think they ought to be separately named, and I therefore ask that that vote on Mr. Stevens' resolution be reconsidered for the purpose of incorporating in the resolution a vote of thanks to the Buffalo Club, the Country Club, and the New York State Bar Association.

Hiram F. Stevens :

I will redraft the resolution and incorporate those names, and hand the resolution to the Secretary.

The President :

If there is no objection, that course may be pursued, by unanimous consent.

George P. Wanty, of Michigan :

The General Council wishes to add to the names reported this morning for the Executive Committee, the following :

Henry St. George Tucker, of Virginia, and William A. Ketcham, of Indiana.

At this point Charles Borchering, Vice-President for New Jersey, took the Chair.

Chairman Borchering :

Gentlemen, you have heard the nomination of Mr. Tucker and Mr. Ketcham as the additional members of the Executive Committee. What is your pleasure ?

Alfred Orendorff, of Illinois :

I move that the Secretary cast the ballot of this Association for the election of those gentlemen.

The Chairman :

I think that is not the order at this time. It occurs to me that the question is, whether the Association is satisfied that these additional names be added to the gentlemen already nominated for members of the Executive Committee.

Selden P. Spencer, of Missouri :

They are added to the list of names already reported. The chairman of the General Council has just now added them by the nominations he has made, and I submit that the proper procedure now is, to put the question on their election.

F. H. Busbee, of North Carolina :

As I understand it, these names stand just as the others ; they are all to be voted for at one and the same time.

Alfred Orendorff :

Mr. Chairman, I press my motion, that the Secretary be instructed to cast the unanimous ballot of this Association for the names of the gentlemen who have been placed in nomination by the General Council.

Selden P. Spencer :

I second that motion.

The Chairman :

Is it not necessary to elect the President first ?

John M. Dickinson, of Tennessee :

A motion has been made, Mr. Chairman, and I call for a vote upon that motion.

Alfred Orendorff :

It has been the custom to elect all of these officers by a single vote.

The Chairman :

The Chair will put the question as suggested. It has been moved and seconded that the Secretary cast the ballot of the Association for the election of the gentlemen whose names have been reported by the General Council.

The motion was carried.

The Chairman :

This vote carries with it the election of Senator Manderson as President, and all the other gentlemen who were placed in nomination this morning, and it gives me extreme pleasure to declare them all unanimously elected.

The Acting President then resumed the chair.

The President :

Gentlemen of the American Bar Association. I would be wanting in common courtesy, if I did not express to you my very hearty appreciation for the very high honor you have given me. I appreciate it too deeply for words, for words are empty and meaningless when there is heartfelt emotion.

Thanking you again I ask what is your further pleasure ? We are on the order of miscellaneous business, if there is any business under that head ?

Merrill Moores, of Indiana :

Mr. President, I wish to offer the following resolution :

*Resolved*, That there is urgent need of a new revision of the statutes of the United States, and the Congress be requested to provide for such revision by suitable legislation, and that the Committee on Jurisprudence and Law Reform and on

Judicial Administration be directed, on behalf of this Association, to present the matter to the Congress.

I think that every lawyer here appreciates the need of a new revision. It will have to be done by Congress. Personally I do not care how it is done, but I believe that this Association ought to memorialize Congress to that end, and I think that these two committees, who will be before Congress at its coming session, might with great propriety present the matter.

Simeon E. Baldwin, of Connecticut :

Inasmuch as there is a Commission already at work codifying and revising a part of the statutes of the United States, it seems to me that it would be wiser to refer the resolution the gentleman has just offered, to the Committee on Jurisprudence and Law Reform ; and I move that the resolution be so referred.

The motion to refer the resolution to the Committee on Jurisprudence and Law Reform was seconded and was adopted.

The President :

The hour of 12 o'clock having arrived, the Chair lays before the Association the special order, which is the report of the Special Committee of Fifteen on " John Marshall Day." What is the pleasure of the Association ?

William Wirt Howe, of Louisiana :

Mr. President, I move that the report of the special committee be received, and that the resolutions proposed by it, be adopted.

Robert D. Benedict :

I second that motion.

The report and the resolutions were adopted.

Adolph Moses, of Illinois :

It has occurred to several members of the committee that there has been an omission in the report, namely, that the Committee of Fifty-one should have power to make its own rules, that the Chairman of the committee be given power to fill vacancies, and that any vacancy occurring in the office of

chairman shall be filled by the Executive Committee of this Association. I move that that power be given to the Committee.

The motion was seconded and adopted.

Everett P. Wheeler, of New York :

The Association yesterday adopted a resolution in reference to the Convention at The Hague, that was reported by the Committee on International Law, but the committee was not authorized to take such steps as it should deem expedient, to bring that resolution to the attention of Congress ; and I therefore move that the Committee on International Law be authorized on behalf of the convention to take such steps as it shall deem expedient to bring the resolution reported by it and adopted by the Association, to the attention of the President of the United States and the United States Senate.

The motion was seconded and was adopted.

The President :

Is there any further business to come before the Association ?

Robert D. Benedict :

I move that the Association do now adjourn *sine die*.

The President :

Before putting the motion, the occupant of the Chair desires to return his hearty thanks for the harmony that has attended the deliberations of the meeting and the courtesies so generously extended to him. The Chair has been greatly helped by that courtesy on the part of every member of the Association, by the close attention that has been paid to the proceedings and the constant attendance given to the meetings by the members.

I hope that we may all meet again, with increased numbers, at our session next year, and that meantime health and prosperity may attend you, each and every one.

The Association then adjourned *sine die*.

JOHN HINKLEY,  
*Secretary.*



## SECRETARY'S REPORT.

BUFFALO, N. Y., August 28, 1899.

The report of the proceedings of our last meeting, at Saratoga Springs, in August, 1898, has been printed and distributed to all the members, and also to a large number of libraries and Bar Associations, on our free mailing list.

There were 1496 members at the close of the last meeting. Twenty seven members have been elected by the Executive Committee between meetings under the 4th Article of the Constitution as amended.

All of the states, except Nevada, and all of the Territories, are represented in our membership.

Invitations were sent to all State Bar Associations to send three delegates to this meeting, and to all City or County Bar Associations, in states having no State Bar Association, to send two delegates. The number of State Bar Associations has been increasing until now 32 of the 45 states have such Associations.

Extra copies of the report of the Special Committee on Parole and Indeterminate Sentences of Prisoners, made last year, were printed as directed.

Reports of the Special Committees on Trade Marks and on Title to Real Estate for this year have been printed and distributed to members by mail, fifteen days before the meeting.

The reports of the Committees on International Law and on Commercial Law have also been printed and a number of the copies are on hand for distribution.

Notices were sent to all members of Standing and Special Committees requesting their attention to matters referred to such committees.

The Register of those in attendance is kept on the table at the hall of meeting during the sessions and is at the recep-

tion room in the Iroquois Hotel in the intervals. This list is valuable for reference, and every member or delegate is requested to sign it as early as convenient. A list of those present will be printed for distribution at the meeting, and will also be included in the report of proceedings.

There are copies of the constitution, lists of officers and members of committees and forms of nominations on the table for distribution.

Respectfully submitted,

JOHN HINKLEY,  
*Secretary.*

# TREASURER'S REPORT.

1898-99.

*Dr.*

To balance from last report, . . . . .		\$4,199 44
" cash received—dues of members, . . . . .	\$6,910 00	
" " " —interest on special deposit, . . . . .	15 00	
" " " —sale of Reports, . . . . .	47 25	6,972 25
	<hr/>	<hr/>
		\$11,171 69

*Cr.*

1898.

Aug. 20.	By cash paid—Incidental expenses of		
	21st Annual Dinner, .	\$20 00	
20.	" " " —Janitor, Convention		
	Hall, Saratoga, . . . . .	30 00	
20.	" " " —"Saratogian," printing		
	21st Meeting, . . . . .	33 50	
23.	" " " —Expenses of Treasurer's		
	Clerk to Saratoga, . . . . .	45 60	
26.	" " " —Three months' rent, stor-		
	age room, . . . . .	30 00	
30.	" " " —Expenses of President,	12 50	
30.	" " " —Grand Union Hotel,		
	Saratoga, 21st dinner, .	1,118 45	
Sept. 2.	" " " —L. D. Brewster, ex-		
	penses of Com. on Uni-		
	form State Laws, year		
	ending Aug. 1898, . . .	100 00	
2.	" " " —E. P. Wheeler, ex-		
	penses of Com. on In-		
	ternational Law, year		
	ending Aug., 1898, . . .	9 50	
		<hr/>	<hr/>
	Amount carried forward, . . .	\$1,399 55	\$11,171 69

1898.			By amount brought forward, . .	\$1,399 55	\$11,171 69
Sept. 3.	By cash paid—"Saratogian," additional printing for 21st Meeting, . . . . .			3 50	
6.	" " " —Murphy's Co., Receipt Book, . . . . .			6 00	
12.	" " " —Printed stamped envelopes, . . . . .			43 80	
14.	" " " —Secretary for balance of disbursements for Clerk hire, Stationery, etc., for year ending August, 1898, . . . . .			252 17	
14.	" " " —J. Franklin Fort, expenses of Com. on Parole and Indeterminate Sentences, etc., for year ending Aug., 1898, . .			9 22	
Oct. 26.	" " " —C. A. Morrison, Stenographer, 21st meeting, .			222 70	
Nov. 30.	" " " —3 months rent of storage room, . . . . .			30 00	
1899.					
Jan. 3.	" " " —Geo. M. Sharp, account expenses of Com. on Legal Education, year ending Aug., 1899,			300 00	
Mar. 1.	" " " —3 months rent of storage room, . . . . .			30 00	
3.	" " " —Shipping 21st Report (wrap'ng, labelling, etc.),			13 00	
16.	" " " —E. Wetmore, expenses of Com. on Federal Courts, for year ending Aug., 1898, . . . . .			500 00	
Apr. 5.	" " " —Printed stamped envelopes, . . . . .			42 40	
	Amount carried forward, . . .			\$2,852 34	\$11,171 69

# REPORT OF THE TREASURER.

91

1899.			By amount brought forward, . .	\$2,852 34	\$11,171 69
May 19.	By cash paid—	Expenses of Treasurer's			
		Clerk to Buffalo to ar-			
		range details of 22d			
		Meeting, . . . . .	31 11		
22.	"	"	—Secretary, on account of		
		his disbursements for			
		Clerk hire, Stationery,			
		etc., for current year, .	200 00		
June 3.	"	"	—3 months rent of storage		
		room, . . . . .	30 00		
16.	"	"	—Murphy's Sons Co.,		
		Receipt Book, . . . .	6 00		
July 10.	"	"	—U. S. Express Co., deliv-		
		ering 21st Report, . .	422 11		
13.	"	"	—Dando Co., printing and		
		binding 21st Report, .	2,082 78		
13.	"	"	—Dando Co., printing ex-		
		tra copies, addresses,			
		papers, committee re-			
		ports etc., . . . . .	263 82		
13.	"	"	—Dando Co., printing		
		stamped envelopes, cir-			
		culars, postal cards and			
		general printing to date,	305 66		
22.	"	"	—Insurance on books, . .	5 00	
Aug. 17.	"	"	—Stamped envelopes for		
		account Committee on			
		Legal Education, . . .	17 25		
22.	"	"	—Clerk to Treasurer, Sal-		
		ary for one year, . . .	350 00		
22.	"	"	—Sundry expenses, tele-		
		grams, stationery, etc.,			
		for one year, . . . . .	99 74		
		Balance, . . . . .	\$4,506 88	\$11,171 69	

## AMERICAN BAR ASSOCIATION.

Which balance consists of—

Amount to credit of Treasurer in Quaker City Nat. Bank, Philadelphia, . . . . .	8,982 44
Certificate of deposit in Union Trust Company, Philadel- phia, 3 per cent. interest, .	500 00
Cash on hand, . . . . .	24 44
	<hr/>
	\$4,506 88
	<hr/>

Respectfully submitted,

FRANCIS RAWLE,

*Treasurer.*

BUFFALO, N. Y., *August 28, 1899.*

The above and foregoing statement of account has been audited and is found correct.

WALTER S. LOGAN,

RALPH W. BRECKENRIDGE,

*Auditing Committee.*

*August 28, 1899.*

**REPORT**  
**OF THE**  
**EXECUTIVE COMMITTEE.**

*August 28, 1899.*

The Executive Committee respectfully reports that under the last clause of Article IV of the Constitution, providing for the election of members by the Executive Committee between meetings when nominated by a majority of the Vice-President and Local Council, the following twenty-seven members were elected :

*(See List at end of List of New Members.)*

Your committee further reports that in accordance with the 12th By-Law, appropriations were made for the use of committees for the year 1898-9 on their application not exceeding the following amounts :

\$500 to Committee on Patent Law.

\$250 to Committee on International Law.

\$500 to Committee on Federal Courts.

\$500 to Committee on Legal Education.

\$100 to Committee on Uniform State Laws.

All committees for the ensuing year whose work may entail expense, are requested to conform to the 12th By-Law, which requires "previous application in advance of the expendi-

ture;" such application should be made to the Executive Committee through the Secretary.

Respectfully submitted,

CHARLES F. MANDERSON,  
JOHN HINKLEY,  
FRANCIS RAWLE,  
W. W. HOWE,  
CHAS. CLAFLIN ALLEN,  
ALFRED HEMENWAY,  
CHARLES NOBLE GREGORY,  
*Executive Committee.*



# MEMBERS REGISTERED

AT THE

## TWENTY-SECOND ANNUAL MEETING.

### 1899.

CHARLES F. MANDERSON, . . . . .	Nebraska.
<i>Acting President.</i>	
JOHN HINKLEY, . . . . .	Maryland.
<i>Secretary.</i>	
FRANCIS RAWLE, . . . . .	Pennsylvania.
<i>Treasurer.</i>	
W. W. HOWE, . . . . .	Louisiana.
ALFRED HEMENWAY, . . . . .	Massachusetts.
CHARLES CLAFLIN ALLEN, . . . . .	Missouri.
CHARLES NOBLE GREGORY, . . . . .	Wisconsin.
<i>Executive Committee.</i>	
WILLIAM P. BREEN, . . . . .	Indiana.
JOHN MORRIS, JR., . . . . .	Indiana.
R. W. BRECKENRIDGE, . . . . .	Nebraska.
WM. L. JANUARY, . . . . .	Michigan.
ADOLPH MOSES, . . . . .	Illinois.
S. P. WOLVERTON, . . . . .	Pennsylvania.
R. W. WILLIAMS, . . . . .	Florida.
HIRAM F. STEVENS, . . . . .	Minnesota.
GUY E. FARQUHAR, . . . . .	Pennsylvania.
GEO. P. WANTY, . . . . .	Michigan.
E. M. BARTLETT, . . . . .	Nebraska.
LOYAL E. KNAPPEN, . . . . .	Michigan.
JOHN S. WIRT, . . . . .	Maryland.
DAVID L. WITHINGTON, . . . . .	California.
LYMAN D. BREWSTER, . . . . .	Connecticut.
MARTIN DEWEY FOLLETT, . . . . .	Ohio.
WILLIAM H. PERKINS, . . . . .	Maryland.
WM. A. PICKENS, . . . . .	Indiana.
GEORGE M. SHARP, . . . . .	Maryland.
R. R. GAINES, . . . . .	Texas.
WM. H. CLARK, . . . . .	Texas.
F. C. WINKLER, . . . . .	Wisconsin.

WM. B. HORNBLOWER, . . . . .	New York.
H. G. WARD, . . . . .	New York.
ALFRED ORENDORFF, . . . . .	Illinois.
CHARLES F. LIBBY, . . . . .	Maine.
S. A. WILLIAMS, . . . . .	Maryland.
STEWART BROWN, . . . . .	Maryland.
ROBERT D. BENEDICT, . . . . .	New York.
JOHN P. BASKIN, . . . . .	Kentucky.
JOHN H. STINESS, . . . . .	Rhode Island.
C. L. BARTLETT, . . . . .	Georgia.
WM. P. MCRAE, . . . . .	Virginia.
HENRY E. DAVIS, . . . . .	District of Columbia.
JULIUS B. CURTIS, . . . . .	Connecticut.
WALTER S. LOGAN, . . . . .	New York.
EDMUND WETMORE, . . . . .	New York.
R. S. TAYLOR, . . . . .	Indiana.
U. M. ROSE, . . . . .	Arkansas.
W. F. BAY STEWART, . . . . .	Pennsylvania.
S. S. P. PATTESON, . . . . .	Virginia.
J. ALSTON CABELL, . . . . .	Virginia.
LEWIS B. GUNCKEL, . . . . .	Ohio.
L. L. LEWIS, . . . . .	Virginia.
S. GRIFFIN, . . . . .	Virginia.
JAMES HAGERMAN, . . . . .	Missouri.
P. W. MELDRIM, . . . . .	Georgia.
RODNEY A. MERCUR, . . . . .	Pennsylvania.
ARTHUR STEUART, . . . . .	Maryland.
W. W. VAN WINKLE, . . . . .	West Virginia.
J. W. FELLOWS, . . . . .	New Hampshire.
SELDEN P. SPENCER, . . . . .	Missouri.
HECTOR T. FENTON, . . . . .	Pennsylvania.
E. WAKELEY, . . . . .	Nebraska.
STEPHEN M. HOYE, . . . . .	New York.
CHARLES BARBER, . . . . .	Wisconsin.
EDWARD W. FROST, . . . . .	Wisconsin.
SKIPWITH WILMER, . . . . .	Maryland.
BURTON SMITH, . . . . .	Georgia.
HENRY W. BOND, . . . . .	Missouri.
HENRY C. RANNEY, . . . . .	Ohio.
GEORGE GLUYAS MERCER, . . . . .	Pennsylvania.
M. F. DICKINSON, JR., . . . . .	Massachusetts.
T. F. PALMER, . . . . .	Indiana.
J. H. BOSARD, . . . . .	North Dakota.
E. T. LOVATT, . . . . .	New York.
E. H. HOPKINS, . . . . .	Ohio.

## MEMBERS REGISTERED.

97

H. H. JOHNSON, . . . . .	Ohio.
JAMES O. CROSBY, . . . . .	Iowa.
HENRY S. DEWEY, . . . . .	Massachusetts.
SAMUEL C. BENNETT, . . . . .	Massachusetts.
FLOYD R. MECHEM, . . . . .	Michigan.
NATHAN MORRIS, . . . . .	Indiana.
THOMAS DENT, . . . . .	Illinois.
QUINCEY A. MYERS, . . . . .	Indiana.
C. E. LITTLEFIELD, . . . . .	Maine.
WM. B. SKELTON, . . . . .	Maine.
FREDERICK E. WADHAMS, . . . . .	New York.
SIMON DAVIS, . . . . .	Massachusetts.
JOHN T. MASON, R., . . . . .	Maryland.
W. E. KAY, . . . . .	Georgia.
JAMES H. WEBB, . . . . .	Connecticut.
MILTON G. URNER, . . . . .	Maryland.
H. ST. G. TUCKER, . . . . .	Virginia.
H. F. MAY, . . . . .	Colorado.
JOHN F. KEATOR, . . . . .	Pennsylvania.
FRED. H. ALDBICH, . . . . .	Michigan.
A. C. BALDWIN, . . . . .	Michigan.
C. A. DUDLEY, . . . . .	Iowa.
R. M. BASHFORD, . . . . .	Wisconsin.
JESSE HOLDOM, . . . . .	Illinois.
E. B. SHERMAN, . . . . .	Illinois.
EDWIN T. MERRICK, . . . . .	Louisiana.
E. A. HARRIMAN, . . . . .	Illinois.
JACOB KLEIN, . . . . .	Missouri.
E. C. CAMP, . . . . .	Tennessee.
WM. S. CURTIS, . . . . .	Missouri.
FRANCIS B. JAMES, . . . . .	Ohio.
C. H. DUELL, . . . . .	District of Columbia.
RALPH WHELAN, . . . . .	Minnesota.
EDMUND F. TRABUE, . . . . .	Kentucky.
LEWIS N. DEMBITZ, . . . . .	Kentucky.
JOHN C. SHERWIN, . . . . .	Iowa.
GEO. W. SEEVERS, . . . . .	Iowa.
L. A. EMERY, . . . . .	Maine.
ERNEST T. FLORANCE, . . . . .	Louisiana.
HENRY WADE ROGERS, . . . . .	Illinois.
FRANCIS J. SWAYZE, . . . . .	New Jersey.
EDWARD T. SANFORD, . . . . .	Tennessee.
ALEXANDER NEW, . . . . .	Missouri.
W. H. MUNGER, . . . . .	Nebraska.
CHAS. S. THORNTON, . . . . .	Illinois.

JUSTUS CHANCELLOR, . . . . .	Illinois.
SIMEON E. BALDWIN, . . . . .	Connecticut.
W. D. McHUGH, . . . . .	Nebraska.
BERNARD McCLOSKEY, . . . . .	Louisiana.
JOHN D. SULLIVAN, . . . . .	Ohio.
H. J. BOOTH, . . . . .	Ohio.
HUGH BUTLER, . . . . .	Colorado.
WILLIAM L. PUTNAM, . . . . .	Massachusetts.
EVERETT P. WHEELER, . . . . .	New York.
E. W. HUFFCUT, . . . . .	New York.
JAMES I. KAY, . . . . .	Pennsylvania.
B. S. LADD, . . . . .	Massachusetts.
EDWARD Q. KEASBEY, . . . . .	New Jersey.
CHARLES BORCHERLING, . . . . .	New Jersey.
ROBT. M. HUGHES, . . . . .	Virginia.
WALTER B. DOUGLAS, . . . . .	Missouri.
J. P. CADWELL, . . . . .	Missouri.
JOHN C. GRAY, . . . . .	Massachusetts.
DONALD McLEAN, . . . . .	New York.
THOS N. McCLELLAN, . . . . .	Alabama.
J. J. WILLETT, . . . . .	Alabama.
L. SPENCER GOBLE, . . . . .	New Jersey.
GILBERT H. STEWART, . . . . .	Ohio.
FABIUS H. BUSBEE, . . . . .	North Carolina.
W. B. QUARTON, . . . . .	Iowa.
J. R. MORTON, . . . . .	Virginia.
GEORGE WHITELOCK, . . . . .	Maryland.
ANSLEY WILCOX, . . . . .	New York.
JAMES L. QUACKENBUSH, . . . . .	New York.
WILLIAM A. MELOY, . . . . .	District of Columbia.
MARTIN CLARK, . . . . .	New York.
AMASA M. EATON, . . . . .	Rhode Island.
ANDREW SQUIRE, . . . . .	Ohio.
W. A. KETCHAM, . . . . .	Indiana.
N. E. CORTHELL, . . . . .	Wyoming.
A. J. McCRARY, . . . . .	Iowa.
J. M. DICKINSON, . . . . .	Tennessee.
BLEWETT LEE, . . . . .	Illinois.
D. K. YOUNG, . . . . .	Tennessee.
BURDETT A. RICH, . . . . .	New York.
BARTLETT TRIPP, . . . . .	South Dakota.
DECIUS S. WADE, . . . . .	Ohio.
EDWIN BURRITT SMITH, . . . . .	Illinois.
MERRILL MOORES, . . . . .	Indiana.
EDWARD DANIELS, . . . . .	Indiana.

HENRY T. ROGERS, . . . . .	Colorado.
CHAPIN BROWN, . . . . .	District of Columbia.
F. M. DANAHER, . . . . .	New York.
T. H. BUSHNELL, . . . . .	Ohio.
ALBERT H. WALKER, . . . . .	Connecticut.
W. O. HARRIS, . . . . .	Kentucky.
NOBLE C. BUTLER, . . . . .	Indiana.
LEWIS E. STANTON, . . . . .	Connecticut.
EDWIN B. GAGER, . . . . .	Connecticut.
JAMES H. ANDERSON, . . . . .	Ohio.
STANLEY WOODWARD, . . . . .	Pennsylvania.
JOHN T. LENAHAH, . . . . .	Pennsylvania.
HENRY W. PALMER, . . . . .	Pennsylvania.
J. PARKER KIRLIN, . . . . .	New York.
WM. D. McNULTY, . . . . .	New York.
R. B. DOWLERY, . . . . .	Ohio.
RICHARD L. ASHHURST, . . . . .	Pennsylvania.
A. E. L. LECKIE, . . . . .	District of Columbia.
GEORGE E. CLARKE, . . . . .	Indiana.
FRANCIS FORBES, . . . . .	New York.
M. R. WALTER, . . . . .	Maryland.
JULIAN W. MACK, . . . . .	Illinois.
J. H. COLLINS, . . . . .	Ohio.
A. M. COPELAND, . . . . .	Massachusetts.
C. L. GARDNER, . . . . .	Massachusetts.
CHARLES MARTINDALE, . . . . .	Indiana.
FRANK TITUS, . . . . .	Missouri.
ADDISON BROWN, . . . . .	New York.
FREDERICK V. BROWN, . . . . .	Minnesota.
CHAS. B. BARNES, JR., . . . . .	Massachusetts.
CLARK BELL, . . . . .	New York.
WILLIAM H. HOTCHKISS, . . . . .	New York.
CLARK B. HINES, . . . . .	Ohio.
WM. E. TALCOTT, . . . . .	Ohio.
C. A. WOODS, . . . . .	South Carolina.
THOMAS A. E. WEADOCK, . . . . .	Michigan.
JNO. L. BRIDGERS, . . . . .	North Carolina.
R. O. BURTON, . . . . .	North Carolina.
JOHN D. LAWSON, . . . . .	Missouri.
SEYMOUR D. THOMPSON, . . . . .	New York.
MELVILLE CHURCH, . . . . .	District of Columbia.
J. M. WOOLWORTH, . . . . .	Nebraska.
L. L. BOND, . . . . .	Illinois.
JAS. H. RAYMOND, . . . . .	Illinois.
EMLIN McCLAIN, . . . . .	Iowa.

W. D. BURK, . . . . .	Iowa.
H. A. RICHARDS, . . . . .	Iowa.
ADELBERT MOOT, . . . . .	New York.
B. M. WINTERNITZ, . . . . .	Pennsylvania.
SIMON F. FLEISCHMANN, . . . . .	New York.
JOHN G. MILBURN, . . . . .	New York.
FREDERICK S. HEBARD, . . . . .	Illinois.
J. D. MCMAHON, . . . . .	Ohio.
ROBT. G. WEST, . . . . .	Texas.
ALBERT BLAIR, . . . . .	Missouri.
GEO. M. SHIPMAN, . . . . .	New Jersey.
EUGENE P. CARVER, . . . . .	Massachusetts.
S. N. CHAMBERS, . . . . .	Indiana.
ALEXANDER L. SMITH, . . . . .	Ohio.
R. F. JACKSON, . . . . .	Tennessee.
F. N. JUDSON, . . . . .	Missouri.
CHAS. HENRY BUTLER, . . . . .	New York.
THEODORE S. WOOLSEY, . . . . .	Connecticut.

Total Registered 227.

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JOSEPH WALTON, Q. C., . . . . .	London.
DR. W. EVANS DARBY, Secretary of the Peace Society, . . . . .	Leamington.
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DR. F. J. TOMPKINS, . . . . .	London.
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J. PARKER KERLIN, Representing Chamber of Shipping of the United Kingdom, . . . . .	New York.
J. C. ALEXANDER, . . . . .	Tunbridge Wells.
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A. R. KENNEDY, . . . . .	London.
E. WALTON, . . . . .	London.
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J. W. FEARNSIDES, . . . . .	London.

## DELEGATES, 1899.

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WILLIAM T. LYNAM, . . . . . Wilmington.

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P. W. MELDRIM, . . . . . Savannah.  
WILLIAM E. KAY, . . . . . Brunswick.

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ADOLPH MOSES, . . . . . Chicago.  
LESTER L. BOND, . . . . . Chicago.

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JOHN C. SHERWIN, . . . . . Mason City.  
JAMES O. CROSBY, . . . . . Garnavillo.

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IRA E. LLOYD, . . . . . Ellsworth.  
L. STILLWELL, . . . . . Erie.

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CHARLES E. LITTLEFIELD, . . . . . Rockland.  
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WILLIAM W. DAVENPORT, . . . . . Greenfield.

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ROBERT O. MORRIS, . . . . . Springfield.

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RALPH WHELAN, . . . . . Minneapolis.  
HIRAM F. STEVENS, . . . . . St. Paul.

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ALEX. C. BOTKIN, . . . . . Helena.

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RALPH W. BRECKENRIDGE, . . . . . Omaha.  
WILLIAM F. GURLEY, . . . . . Omaha.

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JOSEPH W. FELLOWS, . . . . . Manchester.

## MONMOUTH BAR ASSOCIATION, NEW JERSEY.

AARON E. JOHNSTON, . . . . . Freehold.  
DANIEL H. APPLGATE, . . . . . Red Bank.

## NEW MEXICO BAR ASSOCIATION.

FRANK SPRINGER, . . . . . East Las Vegas.  
W. B. CHILDERS, . . . . . Albuquerque.  
R. E. TWITCHELL, . . . . . Las Vegas.



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FREDERICK E. WADHAMS, . . . . . Albany.  
TRACY C. BECKER, . . . . . Buffalo.

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P. D. WALKER, . . . . . Charlotte.  
R. O. BURTON, . . . . . Raleigh.  
GEORGE ROUNTREE, . . . . . Wilmington.

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J. H. BOSARD, . . . . . Grand Forks.

## OHIO STATE BAR ASSOCIATION.

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JAMES H. ANDERSON, . . . . . Columbus.

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J. S. LEISENRING, . . . . . Altoona.  
JOHN F. KEATOR, . . . . . Philadelphia.

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BARTLETT TRIPP, . . . . . Yankton.  
ROBERT J. GAMBLE, . . . . . Yankton.

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W. H. CLARK, . . . . . Dallas.  
FRANK C. DILLARD, . . . . . Sherman.

## VERMONT BAR ASSOCIATION.

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ELISHA MAY, . . . . . St. Johnsbury.  
FRANK PLUMLEY, . . . . . Northfield.

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H. ST. GEORGE TUCKER, . . . . . Lexington.  
J. ALSTON CABELL, . . . . . Richmond.  
ROBERT M. HUGHES, . . . . . Norfolk.

## WEST VIRGINIA BAR ASSOCIATION.

S. W. WALKER, . . . . . Martinsburg.  
JOHN BASSEL, . . . . . Clarksburg.  
D. C. GALLAHER. . . . . Charleston.

## STATE BAR ASSOCIATION OF WISCONSIN.

ROBERT M. BASHFORD, . . . . . Madison.  
EDWARD W. FROST, . . . . . Milwaukee.  
F. C. WINKLER, . . . . . Milwaukee.

## LIST OF MEMBERS ELECTED.

### ARIZONA.

BARNES, WILLIAM H., . . . . . Tucson.  
MORRISON, ROBERT E., . . . . . Prescott.  
SANFORD, ELISHA M., . . . . . Prescott.  
WRIGHT, CHARLES W., . . . . . Tucson.

### CALIFORNIA.

SMITH, SAM. FERRY, . . . . . San Diego.  
TRIPPET, OSCAR A., . . . . . San Diego.

### COLORADO.

BROOKS, FRANKLIN E., . . . . . Colorado Springs.

### DELAWARE.

NIELDS, JOHN P., . . . . . Wilmington.

### DISTRICT OF COLUMBIA.

FISHER, ROBERT J., . . . . . Washington.  
LECKIE, A. E. L., . . . . . Washington.  
MCKENNEY, FREDERIC D., . . . . . Washington.  
SEYMOUR, HENRY A., . . . . . Washington.  
WILLIAMS, W. MOSBY, . . . . . Washington.

### GEORGIA.

MCALPIN, HENRY, . . . . . Savannah.  
KAY, WILLIAM E., . . . . . Brunswick.  
PEABODY, FRANCIS D., . . . . . Columbus.

### IDAHO.

MAYHEW, ALEXANDER E., . . . . . Wallace.  
STEWART, GEORGE H., . . . . . Boise.  
WOODS, WILLIAM W., . . . . . Wallace.

### ILLINOIS.

BARTON, GEORGE P., . . . . . Chicago.  
DYRENFORTH, PHILIP C., . . . . . Chicago.  
DYRENFORTH, WILLIAM H., . . . . . Chicago.  
FURNES, WM. ELLIOT, . . . . . Chicago.

## ILLINOIS—Continued.

HARLAND, WALTER M.,	Chicago.
HILL, LYSANDER,	Chicago.
JUNKIN, FRANCIS T. A.,	Chicago.
McCORDIC, ALFRED E.,	Chicago.
McELROY, JOHN H.,	Chicago.
OTIS, EPHRAIM A.,	Chicago.
PADDOCK, GEORGE L.,	Chicago.

## INDIANA.

BRADLEY, JOHN H.,	La Porte.
BRADY, ARTHUR W.,	Muncie.
CLARKE, GEORGE E.,	South Bend.
DANIELS, EDWARD,	Indianapolis.
EICHORN, WILLIAM H.,	Bluffton.
EVANS, ROWLAND,	Indianapolis.
INGLER, FRANCIS M.,	Indianapolis.
JOSS, FREDERICK H.,	Indianapolis.
MILLER, CHARLES W.,	Goshen.
NOEL, JAMES W.,	Indianapolis.
WHITCOMB, LARZ. A.,	Indianapolis.

## IOWA.

BURK, W. D.,	Muscatine.
CROSBY, JAMES O.,	Garnaville.
RICHARDS, HARRY S.,	Iowa City.
SEEVERS, GEORGE W.,	Oskaloosa.
SHERWIN, JOHN C.,	Mason City.
SWETTING, ERNEST V.,	Algona.

## KENTUCKY.

ALLEN, JOHN R.,	Lexington.
GILBERT, GEORGE G.,	Shelbyville.
LINDSAY, WILLIAM,	Frankfort.
SHERLEY, SWAGAR,	Louisville.
WATTS, WILLIAM W.,	Louisville.
WEBB, GEORGE C.,	Lexington.

## MAINE.

LITTLEFIELD, CHARLES E.,	Rockland.
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## MARYLAND.

BROWN, STEWART,	Baltimore.
RICHMOND, BENJAMIN A.,	Cumberland.
ROBINSON, THOMAS H.,	Bel Air.

**MASSACHUSETTS.**

BARNES, JR., CHARLES B., . . . . . Boston.

**MICHIGAN.**

OSTRANDER, RUSSELL C., . . . . . Lansing.

**MINNESOTA.**

BROWN, FREDERICK V., . . . . . Minneapolis.

TIGHE, AMBROSE, . . . . . St. Paul.

**MISSOURI.**

BRYAN, P. TAYLOR, . . . . . St. Louis.

CHARLES, BENJAMIN H., . . . . . St. Louis.

KING, S. H., . . . . . St. Louis.

KLEIN, JACOB, . . . . . St. Louis.

TITUS, FRANK, . . . . . Kansas City.

WILFLEY, LEBBEUS M., . . . . . St. Louis.

WOERNER, J. GABRIEL, . . . . . St. Louis.

WOOD, JOHN M., . . . . . St. Louis.

**NEBRASKA.**

HARTIGAN, MICHEL A., . . . . . Hastings.

MUNGER, W. H., . . . . . Fremont.

WAKELY, ELEAZER, . . . . . Omaha.

**NEW JERSEY.**

GOODELL, EDWIN B., . . . . . Montclair.

RIKER, ADRIAN, . . . . . Newark.

**NEW YORK.**

CARPENTER, JAMES E., . . . . . New York.

CONGDON, OSSIAN M., . . . . . Ithaca.

CUNNEEN, JOHN, . . . . . Buffalo.

DAVIS, VERNON M., . . . . . New York.

DEMOND, CHARLES M., . . . . . New York.

DUELL, CHARLES H., (Washington, D. C.), . . . Syracuse.

GARDINER, CHARLES A., . . . . . New York.

GIBBS, CLINTON B., . . . . . Buffalo.

HATCH, EDWARD W., . . . . . New York.

HOTCHKISS, WM. HORACE, . . . . . Buffalo.

HUBBARD, HARRY, . . . . . New York.

HULL, GEORGE S., . . . . . Buffalo.

JELLINEK, EDWARD L., . . . . . Buffalo.

## NEW YORK—Continued.

KELLOGG, HERBERT H., . . . . .	New York.
KIRLIN, J. PARKER, . . . . .	New York.
LOVATT, EDWARD T., . . . . .	New York.
MILBURN, JOHN G., . . . . .	Buffalo.
PARSONS, HINS DILL, . . . . .	Schenectady.
PUTNAM, HARRINGTON W., . . . . .	New York.
QUACKENBUSH, JAMES L., . . . . .	Buffalo.
SMITH, SIDNEY, . . . . .	New York.
TREMAIN, HENRY E., . . . . .	New York.
VILLARD, HAROLD G., . . . . .	New York.
WADHAMS, FREDERICK E., . . . . .	Albany.
WALKER, ALBERT H., . . . . .	New York.
WARD, HAMILTON, . . . . .	Buffalo.

## NORTH CAROLINA.

BUXTON, J. C., . . . . .	Winston.
GLENN, R. B., . . . . .	Winston.
HILL, THOMAS N., . . . . .	Halifax.
PATTERSON, LINDSAY, . . . . .	Winston.
WATSON, C. B., . . . . .	Winston.

## NORTH DAKOTA.

BOSARD, JAMES H., . . . . .	Grand Forks.
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## OHIO.

ANDERSON, JAMES H., . . . . .	Columbus.
BOOTH, HENRY J., . . . . .	Columbus.
CADWELL, JAMES P., . . . . .	Jefferson.
COOK, E. S., . . . . .	Cleveland.
HOWLAND, PAUL, . . . . .	Cleveland.
JELKE, FERDINAND, JR., . . . . .	Cincinnati.
McMAHON, J. SPRIGG, . . . . .	Dayton.

## PENNSYLVANIA.

BERTOLETTE, FREDERICK, . . . . .	Mauch Chunk.
HUNTER, ERNEST HOWARD, . . . . .	Philadelphia.
KEATOR, JOHN F., . . . . .	Philadelphia.
LENAHAN, JOHN T., . . . . .	Wilkesbarre.
WOODWARD, STANLEY, . . . . .	Wilkesbarre.

## SOUTH DAKOTA.

TRIPP, BARTLETT, . . . . .	Yankton.
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## TENNESSEE.

JACKSON, ROBERT F., . . . . . Nashville.

## TEXAS.

DILLARD, F. C., . . . . . Sherman.

GAINES, R. R., . . . . . Austin.

WEST, ROBERT G., . . . . . Austin.

## VIRGINIA.

SEATON, EMMETT, . . . . . Richmond.

WILLIAMS, E. RANDOLPH, . . . . . Richmond.

## WEST VIRGINIA.

AMBLER, B. MASON, . . . . . Parkersburg.

ARCHER, V. B., . . . . . Parkersburg.

HUTCHINSON, JOHN F., . . . . . Parkersburg.

## WISCONSIN.

HANSEN, OTTO P., . . . . . Milwaukee.

SPOONER, CHARLES P., . . . . . Milwaukee.

Number elected at Meeting, 130.

ELECTED BY EXECUTIVE COMMITTEE BETWEEN MEETINGS  
1898-1899.

## ARKANSAS.

BOONE, THOMAS W. M., . . . . . Fort Smith.

CRAVENS, WILLIAM M., . . . . . Fort Smith.

HILL, JOSEPH M., . . . . . Fort Smith.

MCDONOUGH, JAMES B., . . . . . Fort Smith.

YOUMANS, FRANK A., . . . . . Fort Smith.

## CALIFORNIA.

MCALLISTER, HALL, . . . . . San Francisco.

## DISTRICT OF COLUMBIA.

CHURCH, MELVILLE, . . . . . Washington.

## IDAHO.

ROBB, BAMFORD A., . . . . . Boise.

## ILLINOIS.

LOESCH, FRANK J., . . . . . Chicago.

## INDIAN TERRITORY.

RITCHIE, JOHN, . . . . . Durant.

## INDIANA.

DUNCAN, HENRY C., . . . . . Bloomington.  
GOUGH, EDWARD, . . . . . Boonville.  
HATFIELD, SIDNEY, . . . . . Boonville.  
SWAN, ELBERT M., . . . . . Rockport.

## IOWA.

KNIGHT, W. J., . . . . . Dubuque.

## MARYLAND.

BUCKLER, WILLIAM H., . . . . . Baltimore.  
HARLEY, CHARLES F., . . . . . Baltimore.

## MASSACHUSETTS.

HASKELL, FREDERIC F., . . . . . Boston.  
PUTNAM, WILLIAM L., . . . . . Boston.

## MICHIGAN.

WHITTEMORE, JAMES, . . . . . Detroit.

## NEBRASKA.

BARTLETT, EDMUND M., . . . . . Omaha.  
SHEEAN, JAMES B., . . . . . Omaha.

## NEW JERSEY.

EMERY, JOHN R., . . . . . Morristown.

## NORTH CAROLINA.

BUSBEE, FABIVS HAYWOOD, . . . . . Raleigh.  
PRUDEN, WILLIAM D., . . . . . Edenton.

## PENNSYLVANIA.

BUCHER, JOSEPH C., . . . . . Lewisburg.

## VIRGINIA.

WILSON, WILLIAM L, . . . . . Lexington.

Number elected by Executive Committee, 27.



## RECAPITULATION.

Arizona, . . . . .	4	Missouri, . . . . .	8
Arkansas, . . . . .	5	Nebraska, . . . . .	5
California, . . . . .	3	New Jersey, . . . . .	3
Colorado, . . . . .	1	New York, . . . . .	26
Delaware, . . . . .	1	North Carolina, . . . . .	7
District of Columbia, . . . . .	6	North Dakota, . . . . .	1
Georgia, . . . . .	3	Ohio, . . . . .	7
Idaho, . . . . .	4	Pennsylvania, . . . . .	6
Illinois, . . . . .	12	South Dakota, . . . . .	1
Indian Territory, . . . . .	1	Tennessee, . . . . .	1
Indiana, . . . . .	15	Texas, . . . . .	3
Iowa, . . . . .	7	Virginia, . . . . .	3
Kentucky, . . . . .	6	West Virginia, . . . . .	3
Maine, . . . . .	1	Wisconsin, . . . . .	2
Maryland, . . . . .	5		
Massachusetts, . . . . .	3		
Michigan, . . . . .	2		
Minnesota, . . . . .	2		
		Total, . . . . .	157

## MEMORANDUM.

The Annual Dinner was given on Wednesday, August 30th, at the Ellicott Square Club. Charles F. Manderson, of Nebraska, the President, presided. Two hundred and thirty-nine were present, including members of the International Law Association.

## LIST OF PRESIDENTS.

1. 1878-79-\*JAMES O. BROADHEAD,<sup>1</sup> . . . St. Louis, Missouri.
2. 1879-80-\*BENJAMIN H. BRISTOW, . . . New York, New York.
3. 1880-81-EDWARD J. PHELPS, . . . Burlington, Vermont.
4. 1881-82-\*CLARKSON N. POTTER,<sup>2</sup> . . . New York, New York.
5. 1882-83-\*ALEXANDER R. LAWTON, . . Savannah, Georgia.
6. 1883-84-CORTLANDT PARKER, . . . Newark, New Jersey.
7. 1884-85-\*JOHN W. STEVENSON, . . . Covington, Kentucky.
8. 1885-86-WILLIAM ALLEN BUTLER, . . New York, New York.
9. 1886-87-\*THOMAS J. SEMMES, . . . New Orleans, Louisiana.
10. 1887-88-\*GEORGE G. WRIGHT, . . . Des Moines, Iowa.
11. 1888-89-\*DAVID DUDLEY FIELD, . . . New York, New York.
12. 1889-90-HENRY HITCHCOCK, . . . St. Louis, Missouri.
13. 1890-91-SIMEON E. BALDWIN, . . . New Haven, Connecticut.
14. 1891-92-JOHN F. DILLON, . . . New York, New York.
15. 1892-93-\*J. RANDOLPH TUCKER, . . Lexington, Virginia.
16. 1893-94-\*THOMAS M. COOLEY,<sup>3</sup> . . . Ann Arbor, Michigan.
17. 1894-95-JAMES C. CARTER, . . . New York, New York.
18. 1895-96-MOORFIELD STOREY, . . . Boston, Massachusetts.
19. 1896-97-JAMES M. WOOLWORTH, . . Omaha, Nebraska.
20. 1897-98-WILLIAM WIRT HOWE, . . . New Orleans, Louisiana.
21. 1898-99-JOSEPH H. CHOATE,<sup>4</sup> . . . New York, New York.
22. 1899-1900-CHARLES F. MANDERSON, . Omaha, Nebraska.

\* Deceased.

<sup>1</sup> At the Conference for organizing the Association in 1878, John H. B. Latrobe, of Maryland, was elected Temporary Chairman, and when the organization was completed, Benjamin H. Bristow, of Kentucky, was elected President of the Conference.

<sup>2</sup> In consequence of the death of Clarkson N. Potter, Francis Kernan, of New York, presided and prepared and delivered the President's Address in 1882.

<sup>3</sup> In consequence of the illness of Thomas M. Cooley, Samuel F. Hunt, of Ohio, presided and read the President's Address prepared by Judge Cooley in 1894.

<sup>4</sup> In consequence of the absence of Joseph H. Choate, as Ambassador to Great Britain, Charles F. Manderson, of Nebraska, presided and prepared and delivered the President's Address in 1899.

## LIST OF SECRETARIES.

1. 1878-93-\*EDWARD OTIS HINKLEY,<sup>1</sup> . . . Baltimore, Maryland.
2. 1893- JOHN HINKLEY,<sup>2</sup> . . . . . Baltimore, Maryland.

## LIST OF TREASURERS.

1. 1878- FRANCIS RAWLE, . . . . . Philadelphia, Penna. •

## LIST OF EXECUTIVE COMMITTEE.

1. 1878-87-\*LUKE P. POLAND, . . . . . St. Johnsbury, Vermont.
2. 1878-88-SIMEON E. BALDWIN,<sup>3</sup> . . . . . New Haven, Connecticut.
3. 1878-80-WILLIAM A. FISHER, . . . . . Baltimore, Maryland.
4. 1880-85-WILLIAM ALLEN BUTLER, . . . New York, New York.
5. 1885-90-CHARLES C. BONNEY,<sup>3</sup> . . . . . Chicago, Illinois.
6. 1887-96-GEORGE A. MERCER, . . . . . Savannah, Georgia.
7. 1888-90-\*JOHN RANDOLPH TUCKER, . . Lexington, Kentucky.
8. 1890-91-\*WILLIAM P. WELLS, . . . . . Detroit, Michigan.
9. 1890-99-ALFRED HEMENWAY, . . . . . Boston, Massachusetts.
10. 1891-95-\*BRADLEY G. SCHLEY, . . . . . Milwaukee, Wisconsin.
11. 1895-99-CHARLES CLAFLIN ALLEN, . . . St. Louis, Missouri.
12. 1896-97-WILLIAM WIRT HOWE, . . . . . New Orleans, Louisiana.
13. 1897- CHARLES NOBLE GREGORY, . . . Madison, Wisconsin.
14. 1899- U. M. ROSE, . . . . . Little Rock, Arkansas.
15. 1899- EDMUND WETMORE, . . . . . New York, New York.
16. 1899- WILLIAM A. KETCHAM, . . . . . Indianapolis, Indiana.
17. 1899- HENRY ST. GEORGE TUCKER, . . Lexington, Virginia.

\* Deceased.

<sup>1</sup> In 1878, Francis Rawle, of Pennsylvania, and Isaac Grant Thompson, of New York, acted as temporary Secretaries and as Secretaries of the Conference.

In 1886, Edward Otis Hinkley being absent, Walter George Smith, of Pennsylvania, acted as Secretary *pro tempore*.

<sup>2</sup> In 1898, John Hinkley being absent, George P. Wanty, of Michigan, acted as Secretary *pro tempore*.

<sup>3</sup> In 1888, at the first meeting of the Executive Committee after the adjournment of the Association, Simeon E. Baldwin resigned, and Charles C. Bonney was chosen to fill the vacancy under By-Law X.

# CONSTITUTION.

## NAME AND OBJECT.

ARTICLE I.—This Association shall be known as “THE AMERICAN BAR ASSOCIATION.” Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

## QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership in this Association who shall be, and shall, for five years next preceding, have been a member in good standing of the Bar of any State, and who shall also be nominated as hereinafter provided.

## OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each Annual Meeting for the year ensuing: A President (the same person shall not be elected President two years in succession); one Vice-President from each State; a Secretary; a Treasurer; a Council, consisting of one member from each State (the Council shall be a standing committee on nominations for office); an Executive Committee, which shall consist of the President, the last ex-President, the Secretary, and the Treasurer, all of whom shall be *ex officio* members, together with five other members, to be chosen by the Association, but no member shall be eligible to such choice more than three years in succession; and the President, and in his absence the ex-President, shall be the Chairman of the committee.\*

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\*Amended August 19, 1898, and August 30, 1899.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each :

- On Jurisprudence and Law Reform ;
- On Judicial Administration and Remedial Procedure ;
- On Legal Education and Admissions to the Bar ;
- On Commercial Law ;
- On International Law ;
- On Publications ;
- On Grievances ;
- \*On Law Reporting and Digesting ;
- †On Patent, Trade-Mark and Copyright Law.

A majority of those members of any committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purpose of such meeting.

The Vice-President for each State, and not less than two other members from such State, to be annually elected, shall constitute a Local Council for such State, to which shall be referred all applications for membership from such State. The Vice-President shall be, *ex officio*, Chairman of such Council.

A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each Annual Meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the committee, be proper.

It shall be the duty of the Vice-President from each State and Territory to report the deaths of members within the same to the said committee.

#### ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the State to the Bar of which

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\*By amendment passed August 29, 1895.

†By amendment passed August 30, 1899.

the persons nominated belong. Such nominations must be transmitted in writing to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from States having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any State; *Provided*, That no nomination shall be considered by the General Council, unless accompanied by a statement in writing by at least three members of the Association from the same State with the person nominated, or, in their absence, by members from a neighboring State or States, to the effect that the person nominated has the qualifications required by the Constitution and desires to become a member of the Association, and recommending his admission as a member.

All nominations thus made or approved shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; *Provided*, That if any member demand a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same State, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

During the period between the Annual Meetings, members may be elected by the Executive Committee upon the written nomination of a majority of the Vice-President and members of the Local Council of any State.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them upon the recommendation of the committee of five appointed by such Conference, shall become members of the Association upon payment of the annual dues for the current year herein provided for.

## BY-LAWS.

ARTICLE VI.—By-Laws may be adopted at any Annual Meeting of the Association by a majority of the members present. It shall be the duty of the Executive Committee, without delay, to adopt suitable By-Laws, which shall be in force until rescinded by the Association.

## DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

## ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each Annual Meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several States and by Congress during the preceding year. It shall be the duty of the member of the General Council from each State to report to the President, on or before the first day of May, annually, any such legislation in his State.

## ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

## AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any



Annual Meeting, but no such change shall be made at any meeting at which less than thirty members are present.

## CONSTRUCTION.

ARTICLE XI.—The word “*State*,” whenever used in this Constitution, shall be deemed to be equivalent to *State, Territory*, and the *District of Columbia*.

## BY-LAWS.

### MEETING OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual Meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II.—The order of exercises at the Annual Meeting shall be as follows :

- (a) Opening Address of the President.
- (b) Nominations and Election of Members.
- (c) Election of the General Council.
- (d) Reports of Secretary and Treasurer.
- (e) Report of Executive Committee.
- (f) Reports of Standing Committees :
  - On Jurisprudence and Law Reform ;
  - On Judicial Administration and Remedial Procedure ;
  - On Legal Education and Admissions to the Bar ;
  - On Commercial Law ;
  - On International Law ;
  - On Publications ;
  - On Grievances ;
  - On Law Reporting and Digesting.
- (g) Reports of Special Committees.
- (h) The Nomination of Officers.
- (i) Miscellaneous Business.
- (j) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV.—Each State Bar Association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association. In States where no State Bar Association exists, any City or County Bar Association may appoint such delegates, not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—At any of the meetings of the Association, members of the Bar of any foreign country or of any State who are not members of the Association may be admitted to the privileges of the floor during such meeting.

VI.—All papers read before the Association shall be lodged with the Secretary. The Annual Address of the President, the reports of committees, and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

Extra copies of reports, addresses, and papers read before the Association may be printed by the Committee on Publications for the use of their authors, not exceeding two hundred copies for each of such authors.

The Secretary and the Chairman of the Executive Committee shall endeavor to arrange with the Smithsonian Institution, or otherwise, a system of exchanges by which the *Transactions*

can be annually exchanged with those of other associations in foreign countries interested in jurisprudence or governmental affairs; and the Secretary shall exchange the *Transactions* with those of the State and Local Bar Associations; and all books thus acquired shall be bound and deposited in the charge of the New York City Bar Association, subject to the call of this Association, if it ever desires to withdraw or consult them, if the former Association agrees to such deposit.

The Secretary shall send one copy of the Report of the proceedings of this Association to the President of the United States, and to each of the Judges of the Supreme Court thereof, and to the Library of the State Department, and of the Department of Justice thereof, and to the Library of Congress, and the Library of the Supreme Court thereof, and to the Governor, and to the Chief Judge of the court of last resort of each State, and to the State Librarian thereof, and to all public law libraries, and other principal public and college libraries in the United States, and to such other persons or bodies as the Executive Committee may direct.

No resolution complimentary to an officer or member for any service performed, paper read, or address delivered shall be considered by the Association.

#### OFFICERS AND COMMITTEES.

VII.—The terms of office of all officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VIII.—The President shall appoint all committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons appointed. The Committee on Publications shall be appointed on the first day of each meeting.

IX.—The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

X.—The Council and all standing committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective Chairmen shall appoint. If at any Annual Meeting of the Association any member of any committee shall be absent, the vacancy may be filled by the members of the committee present.

The Secretary of the Association shall be the Secretary of the Council.

XI.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the Chairman shall appoint.

XII.—Special meetings of any committee shall be held at such times and places as the Chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

The traveling and other necessary expenses incurred by any committee, standing or special, for meetings of such committee, during the interval between the Annual Meetings of the Association, shall be paid by the Treasurer, on the approval and by the order of the Executive Committee, out of such appropriation, as to the Executive Committee may seem necessary in each case, on previous application in advance of its expenditure.

All committees may have their reports printed by the Secretary before the Annual Meeting of the Association; and any such report, containing any recommendation for action on the part of the Association, shall be printed and shall be distributed by mail by the Secretary to all the members of the Association

at least fifteen days before the Annual Meeting at which such report is proposed to be submitted.\*

It shall be the duty of each Vice-President and member of the General Council of this Association to endeavor to procure the enactment by the legislature of their State of each and every law recommended by the Association, and the Secretary shall furnish them with copies of each and every recommendation and draft of bill, when there shall be such draft; and whenever this Association shall by resolution recommend the enactment of any law or laws, the Secretary shall, as soon as possible, furnish a copy of the resolution to the President of each State Bar Association, with the request of this Association that such State Bar Association shall co-operate with the local Vice-President and member of the General Council of this Association in having a bill introduced in the legislature of its State containing the subject-matter recommended by such resolution, and use proper means to procure the enactment of the same into law. In every State where there is no State Bar Association, a copy of such resolution with a similar request, shall be sent to the President of the Bar Association of the principal city in such State; and in every instance where the form of bill has been recommended with the resolution, a copy of such form of bill shall also be sent with the resolution.

#### ANNUAL DUES.

XIII.—The Annual Dues shall be payable at the Annual Meeting in advance. If any member neglects to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

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\* The following resolution was adopted on August 30, 1889:

"*Resolved*, That any standing or special committee hereafter reporting necessary legislation, shall prepare a bill embodying their views, for the approval of the Association."

A member who has been dropped from the roll for non-payment of dues may be restored to membership by the Executive Committee upon the payment of all back dues. *Provided*, such restoration shall be recommended by a member of the Local Council of his State, or in their absence, at an Annual Meeting, by any two members of the Association.

XIV.—A Section of the Association, to be known as the Section of Legal Education, is hereby established, which shall meet annually in connection with the Meeting of the Association, but not during such hours as the Association is in session.

Its object shall be the discussion of methods of Legal Education, and it may make recommendations to the Association, which shall be referred by the Association to the Committee on Legal Education.

The proceedings of the Section may be published from time to time, at the discretion of the Executive Committee, and on the recommendation of the Committee on Publications.

All members of the Association, who desire, may enroll themselves as members of the Section, and persons not eligible for membership in the Association, but who are engaged in teaching law, may be admitted to the privilege of the floor at any meeting of the Section, by vote of the Section.

The Section shall be organized by the appointment of a Chairman and Secretary, at its first session; and a Chairman and Secretary shall thereafter be elected annually by the Section.

A Section of the Association, to be known as the Section of Patent, Trade-Mark\* and Copyright Law, is hereby established, which shall meet annually in connection with the meeting of the Association, but not during such hours as the Association is in session.

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\* As amended, 1899.

Its object shall be to discuss the subject of the law and practice relating to patents, trade-marks and copyrights. It may report to the Association ; and matters relating to patents, trade-marks and copyrights may be referred to it.

The proceedings of the Section may be published from time to time, at the discretion of the Executive Committee, and on the recommendation of the Committee on Publications.

All members of the Association, who desire, may enroll themselves as members of the Section.

The Section shall be organized by the appointment of a Chairman and Secretary by the Section, and a Chairman and Secretary shall be thereafter annually elected by the Section for the year commencing upon the final adjournment of its meeting.



# OFFICERS.

1899-1900.

PRESIDENT,  
CHARLES F. MANDERSON,  
*Omaha, Nebraska.*

SECRETARY,  
JOHN HINKLEY,  
*215, North Charles Street, Baltimore, Maryland.*

TREASURER,  
FRANCIS RAWLE,  
*328, Chestnut Street, Philadelphia, Pennsylvania.*

## EXECUTIVE COMMITTEE. *EX OFFICIO.*

CHARLES F. MANDERSON, PRESIDENT.  
JOSEPH H. CHOATE, LAST PRESIDENT.  
JOHN HINKLEY, SECRETARY.  
FRANCIS RAWLE, TREASURER.

ELECTED MEMBERS.  
CHARLES NOBLE GREGORY, *Madison, Wisconsin.*  
U. M. ROSE, *Little Rock, Arkansas.*  
EDMUND WETMORE, *New York, New York.*  
WILLIAM A. KETCHAM, *Indianapolis, Indiana.*  
HENRY ST. GEORGE TUCKER, *Lexington, Virginia.*

## GENERAL COUNCIL.

ALABAMA, . . . . .	JOSEPH J. WILLETT, . . . . .	Anniston.
ARIZONA TERRITORY, .	EVERETT E. ELLINWOOD, . .	Flagstaff.
ARKANSAS, . . . . .	U. M. ROSE, . . . . .	Little Rock.
CALIFORNIA, . . . . .	DAVID L. WITHINGTON, . .	San Diego.
COLORADO, . . . . .	HUGH BUTLER, . . . . .	Denver.
CONNECTICUT, . . . . .	JULIUS B. CURTIS, . . . . .	Stamford.
DELAWARE, . . . . .	ANTHONY HIGGINS, . . . . .	Wilmington.
DISTRICT OF COLUMBIA,	CHAPIN BROWN, . . . . .	Washington.
FLORIDA, . . . . .	R. W. WILLIAMS, . . . . .	Tallahassee.
GEORGIA, . . . . .	P. W. MELDRIM, . . . . .	Savannah.
IDAHO, . . . . .	WILLIAM W. WOODS, . . . .	Wallace.
ILLINOIS, . . . . .	ALFRED ORENDORFF, . . . .	Springfield.
INDIAN TERRITORY, .	J. W. MCLOUD, . . . . .	South McAlester.
INDIANA, . . . . .	WILLIAM P. BREEN, . . . .	Fort Wayne.
IOWA, . . . . .	JOHN C. SHERWIN, . . . . .	Mason City.
KANSAS, . . . . .	JOHN D. MILLIKEN, . . . . .	McPherson.
KENTUCKY, . . . . .	W. O. HARRIS, . . . . .	Louisville.
LOUISIANA, . . . . .	WILLIAM WIRT HOWE, . . . .	New Orleans.
MAINE, . . . . .	CHARLES F. LIBBY, . . . . .	Portland.
MARYLAND, . . . . .	GEORGE WHITELOCK, . . . .	Baltimore.
MASSACHUSETTS, . . .	SAMUEL C. BENNETT, . . . .	Boston.
MICHIGAN, . . . . .	GEORGE P. WANTY, ( <i>Ch'n</i> ), .	Grand Rapids.
MINNESOTA, . . . . .	HIRAM F. STEVENS, . . . . .	St. Paul.
MISSISSIPPI, . . . . .	R. H. THOMPSON, . . . . .	Jackson.
MISSOURI, . . . . .	JAMES HAGERMAN, . . . . .	St. Louis.
MONTANA, . . . . .	A. C. BOTKIN, ( <i>Wash. D. C.</i> )	Helena.
NEBRASKA, . . . . .	WM. D. MCHUGH, . . . . .	Omaha.
NEW HAMPSHIRE, . . .	JOSEPH W. FELLOWS, . . . .	Manchester.
NEW JERSEY, . . . . .	CHARLES BORCHERLING, . . .	Newark.
NEW MEXICO, . . . . .	HENRY L. WARREN, . . . . .	Albuquerque.
NEW YORK, . . . . .	ROBERT D. BENEDICT, . . . .	New York.

NORTH CAROLINA, . .	JOHN L. BRIDGERS, . . . .	Tarboro.
NORTH DAKOTA, . . .	JAMES H. BOSARD, . . . .	Grand Forks.
OHIO, . . . . .	ANDREW SQUIRE, . . . .	Cleveland.
OKLAHOMA TER., . .	HENRY E. ASP, . . . . .	Guthrie.
OREGON, . . . . .	CHARLES H. CAREY, . . . .	Portland.
PENNSYLVANIA, . . .	RODNEY A. MERCUR, . . . .	Towanda.
RHODE ISLAND, . . .	AMASA M. EATON, . . . . .	Providence.
SOUTH CAROLINA, . .	CHARLES A. WOODS, . . . .	Marion.
SOUTH DAKOTA, . . .	BARTLETT TRIPP, . . . . .	Yankton.
TENNESSEE, . . . . .	J. M. DICKINSON, . . . . .	Nashville.
TEXAS, . . . . .	WILLIAM H. CLARK, . . . .	Dallas.
UTAH, . . . . .	RICHARD B. SHEPARD, . . .	Salt Lake City.
VERMONT, . . . . .	ELIHU B. TAFT, . . . . .	Burlington.
VIRGINIA, . . . . .	S. GRIFFIN, . . . . .	Bedford City.
WASHINGTON, . . . .	C. H. HANFORD, . . . . .	Seattle.
WEST VIRGINIA, . . .	W. W. VANWINKLE, . . . .	Parkersburg.
WISCONSIN, . . . . .	CHAS. NOBLE GREGORY, . . .	Madison.
WYOMING, . . . . .	CHARLES N. POTTER, . . . .	Cheyenne.

**VICE-PRESIDENTS**  
**AND**  
**MEMBERS OF LOCAL COUNCILS.**

**ELECTED 1899.**

**ALABAMA.**

Vice-President, THOMAS N. McCLELLAN, . . . . . Montgomery.  
Local Council, JOHN D. ROQUEMORE, . . . . . Montgomery.  
                  ALEXANDER T. LONDON, . . . . . Birmingham.  
                  EDWARD L. RUSSELL, . . . . . Mobile.  
                  THOMAS H. WATTS, . . . . . Montgomery.

**ARIZONA TERRITORY.**

Vice-President, JOHN C. HERNDON, . . . . . Prescott.  
Local Council, EVERETT E. ELLINWOOD, . . . . . Flagstaff.

**ARKANSAS.**

Vice-President, STERLING R. COCKRILL, . . . . . Little Rock.  
Local Council, BEN. T. DuVAL, . . . . . Fort Smith.

**CALIFORNIA.**

Vice-President, JAMES A. GIBSON, . . . . . Los Angeles.  
Local Council, STEPHEN M. WHITE, . . . . . Los Angeles.  
                  ROBERT Y. HAYNE, . . . . . San Francisco.  
                  WILLIAM J. HUNSAKER, . . . . . Los Angeles.  
                  W. H. CHICKERING, . . . . . San Francisco.  
                  GEORGE FULLER, . . . . . San Diego.

**COLORADO.**

Vice-President, MOSES HALLETT, . . . . . Denver.  
Local Council, CHARLES M. CAMPBELL, . . . . . Denver.  
                  CHARLES J. HUGHES, JR., . . . . . Denver.  
                  CASS E. HERRINGTON, . . . . . Denver.  
                  PLATT ROGERS, . . . . . Denver.  
                  HUGH BUTLER, . . . . . Denver.  
                  JOEL F. VAILE, . . . . . Denver.

**CONNECTICUT.**

Vice-President, WASHINGTON F. WILLCOX, Chester.  
Local Council, LEWIS E. STANTON, . . . . . Hartford.  
                  TALCOTT H. RUSSELL, . . . . . New Haven.  
                  CHARLES E. SEARLES, . . . . . Putnam.  
                  GEORGE D. WATROUS, . . . . . New Haven.  
                  DONALD T. WARNER, . . . . . Salisbury.  
                  EDWIN B. GAGER, . . . . . Derby.

**DELAWARE.**

**Vice-President, GEORGE GRAY, . . . . . Wilmington.**  
**Local Council, WILLARD SAULSBURY, . . . Wilmington.**  
**JOHN P. NIELDS, . . . . . Wilmington.**

## DISTRICT OF COLUMBIA.

**Vice-President, HENRY E. DAVIS, . . . . . Washington.**  
**Local Council, SAMUEL MADDOX, . . . . . Washington.**  
**JAMES G. PAYNE, . . . . . Washington.**  
**SAMUEL R. BOND, . . . . . Washington.**  
**TALLMADGE A. LAMBERT, . Washington.**  
**MELVILLE CHURCH, . . . . . Washington.**  
**WM. A. MELOY, . . . . . Washington.**  
**A. E. L. LECKIE, . . . . . Washington.**

**FLORIDA.**

**Vice-President, JOHN C. AVERY, . . . . . Pensacola.**  
**Local Council, LOUIS C. MASSEY, . . . . . Orlando.**  
**C. D. RINEHART, . . . . . Jacksonville.**  
**B. S. LIDDON, . . . . . Pensacola.**  
**WILLIAM A. BLOUNT, . . . . . Pensacola.**  
**D. U. FLETCHER, . . . . . Jacksonville.**

## GEORGIA.

**Vice-President, BURTON SMITH, . . . . . Atlanta.**  
**Local Council, CHARLES L. BARTLETT, . . Macon.**  
**JOSEPH R. LAMAR, . . . . . Augusta.**  
**W. E. KAY, . . . . . Brunswick.**  
**FULTON COLVILLE, . . . . . Atlanta.**  
**HENRY McALPIN, . . . . . Savannah.**  
**FRANCIS D. PEABODY, . . . . . Columbus.**

IDAHO.

**Vice-President, WILLIAM W. WOODS, . . . . Wallace.**  
**Local Council, ALEXANDER E. MAYHEW, . Wallace.**  
**GEORGE H. STEWART, . . . . Boise.**  
**HENRY STUART GREGORY, Wallace.**

ILLINOIS.

**Vice-President, E. B. SHERMAN, . . . . . Chicago.**  
**Local Council, CHARLES S. THORNTON, . . Chicago.**  
**THOMAS DENT, . . . . . Chicago.**  
**EDWIN BURRITT SMITH, . . Chicago.**  
**HENRY WADE ROGERS, . . Evanston.**  
**JESSE HOLDOM, . . . . . Chicago.**  
**BLEWETT LEE, . . . . . Chicago.**  
**JAMES H. RAYMOND, . . . . Chicago.**  
**EDWARD A. HARRIMAN, . . Chicago.**

## INDIAN TERRITORY.

**Vice-President, J. W. McLOUD, . . . . . South McAlester.**

# INDIANA.

Vice-President,	QUINCY A. MYERS,	Logansport.
Local Council,	WILLIAM A. KETCHAM,	Indianapolis.
	NOBLE C. BUTLER,	Indianapolis.
	WILLIAM L. TAYLOR,	Indianapolis.
	LOUIS NEWBERGER,	Indianapolis.
	TRUMAN F. PALMER,	Monticello.
	GEORGE L. REINHARD,	Bloomington.
	JOHN MORRIS, JR.,	Fort Wayne.

**IOWA.**

Vice-President,	JAMES O. CROSBY,	Garnavillo.
Local Council,	GEORGE W. SEEVERS,	Oskaloosa.
	C. A. DUDLEY,	Des Moines.
	ALVIN J. McCRARY,	Keokuk.
	W. B. QUARTON,	Algona.
	EMLIN McCLAIN,	Iowa City.
	H. S. RICHARDS,	Iowa City.
	W. D. BURK,	Muscatine.

**KANSAS.**

**Vice-President, JOHN D. MILLIKEN, . . . . McPherson.**  
**Local Council, CHARLES B. SMITH, . . . . Topeka.**  
**BALIE P. WAGGENER, . . . . Atchison.**  
**THOMAS B. WALL, . . . . Wichita.**

## KENTUCKY.

**Vice-President, WILLIAM LINDSAY, . . . . Frankfort.**  
**Local Council, J. R. MORTON, . . . . Lexington.**  
**JAMES S. PIRTLE, . . . . Louisville.**  
**JOHN B. BASKIN, . . . . Louisville.**

LOUISIANA.

**Vice-President, ERNEST T. FLORANCE, . . . New Orleans.**  
**Local Council, EDWIN T. MERRICK, . . . New Orleans.**  
**BERNARD McCLOSKEY, . . . New Orleans.**  
**THOS. J. KERNAN, . . . . . Baton Rouge.**

**MAINE.**

Vice-President, LUCILIUS A. EMERY, . . . . Ellsworth.  
 Local Council, FRANK M. HIGGINS, . . . . Limerick.  
                   HANNIBAL E. HAMLIN, . . . Ellsworth.  
                   FREDERICK A. POWERS, . . . Houlton.  
                   GEORGE E. BIRD, . . . . . Portland.  
                   WILLIAM B. SKELTON, . . . Lewiston.

**MARYLAND.**

Vice-President, JOHN T. MASON, R. . . . . Baltimore.  
 Local Council, THOMAS J. MORRIS, . . . . Baltimore.  
                   GEORGE M. SHARP, . . . . . Baltimore.  
                   ARTHUR STEUART, . . . . . Baltimore.  
                   CONWAY W. SAMS, . . . . . Baltimore.  
                   RICHARD BERNARD, . . . . . Baltimore.  
                   STEVENSON A. WILLIAMS, . . . Bel Air.  
                   JOHN S. WIRT, . . . . . Elkton.  
                   ROBERT R. HENDERSON, . . . Cumberland.

**MASSACHUSETTS.**

Vice-President, M. F. DICKINSON, JR., . . . . Boston.  
 Local Council, ALFRED HEMENWAY, . . . . Boston.  
                   JOHN C. GRAY, . . . . . Boston.  
                   BABSON S. LADD, . . . . . Boston.  
                   HENRY S. DEWEY, . . . . . Boston.  
                   WILLIAM L. PUTNAM, . . . . Boston.

**MICHIGAN.**

Vice-President, AUGUSTUS C. BALDWIN, . . . Pontiac.  
 Local Council, FREDERICK H. ALDRICH, . . . Detroit.  
                   LOYAL E. KNAPPEN, . . . . . Grand Rapids.  
                   FLOYD R. MECHEM, . . . . . Ann Arbor.  
                   WILLIAM L. JANUARY, . . . . Detroit.  
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BLACKFORD, AARON, . . . . .	Findlay, Ohio.
BLACKLIDGE, JAMES C., . . . . .	Kokomo, Ind.
BLAIR, ALBERT, . . . . .	St. Louis, Mo.
BLAIR, FRANK PRESTON, . . . . .	Chicago, Ill.
BLAIR, JAMES L., . . . . .	St. Louis, Mo.
BLAIR, JOHN S., . . . . .	Washington, D. C.
BLOOD, JAMES H., . . . . .	Denver, Col.
BLOUNT, WILLIAM A., . . . . .	Pensacola, Fla.
BONAPARTE, CHARLES J., . . . . .	Baltimore, Md.
BOND, HENRY W., . . . . .	St. Louis, Mo.
BOND, S. R., . . . . .	Washington, D. C.
BONNER, J. W., . . . . .	Nashville, Tenn.
BONNEY, C. C., . . . . .	Chicago, Ill.
BOONE, THOS. W. M., . . . . .	Fort Smith, Ark.
BOOTH, HENRY J., . . . . .	Columbus, Ohio.
BORCHERLING, CHARLES, . . . . .	Newark, N. J.
BOSARD, JAMES H., . . . . .	Grand Forks, N. D.
BOTTUM, E. H., . . . . .	Milwaukee, Wis.
BOUDEMAN, DALLAS, . . . . .	Kalamazoo, Mich.
BOWERS, E. J., . . . . .	Bay St. Louis, Miss.

BOWLER, ROBERT B., . . . . .	Cincinnati, Ohio.
BOYLE, WILBUR F., . . . . .	St. Louis, Mo.
BOYNTON, HERBERT E., . . . . .	Detroit, Mich.
BRADFORD, CHESTER, . . . . .	Indianapolis, Ind.
BRADFORD, EDWARD G., . . . . .	Wilmington, Del.
BRADFORD, J. C., . . . . .	Nashville, Tenn.
BRADLEY, JOHN H., . . . . .	La Porte, Ind.
BRADWELL, JAMES B., . . . . .	Chicago, Ill.
BRADY, ARTHUR W., . . . . .	Muncie, Ind.
BRANCH, OLIVER E., . . . . .	Manchester, N. H.
BRANDEIS, LOUIS D., . . . . .	Boston, Mass.
BRANDON, MORRIS, . . . . .	Atlanta, Ga.
BRANNAN, J. DODDRIDGE, . . . . .	Cambridge, Mass.
BRANTLY, WILLIAM T., . . . . .	Baltimore, Md.
BREAUX, G. A., . . . . .	New Orleans, La.
BRECKENRIDGE, RALPH W., . . . . .	Omaha, Neb.
BREDIN, JAMES, . . . . .	Pittsburg, Pa.
BREEN, WILLIAM P., . . . . .	Ft. Wayne, Ind.
BREWER, DAVID J., . . . . .	Washington, D. C.
BREWSTER, LYMAN D., . . . . .	Danbury, Conn.
BRICE, ALBERT G., . . . . .	New Orleans, La.
BRICE, HERBERT L., . . . . .	Lima, Ohio.
BRIDGERS, JOHN L., . . . . .	Tarboro, N. C.
BRIGHTLY, F. F., . . . . .	Philadelphia, Pa.
BRISCOE, CHARLES H., . . . . .	Hartford, Conn.
BRITT, E. W., . . . . .	San Francisco, Cal.
BROOKS, FRANCIS A., . . . . .	Boston, Mass.
BROOKS, FRANKLIN E., . . . . .	Colorado Springs, Col.
BROWN, ADDISON, . . . . .	New York, N. Y.
BROWN, CHAPIN, . . . . .	Washington, D. C.
BROWN, FRANCIS SHUNK, . . . . .	Philadelphia, Pa.
BROWN, FREDERICK V., . . . . .	Minneapolis, Minn.
BROWN, HENRY B., . . . . .	Washington, D. C.
BROWN, J. HAY, . . . . .	Lancaster, Pa.
BROWN, JOHN A., . . . . .	Philadelphia, Pa.
BROWN, JOHN DOUGLASS, JR., . . . . .	Philadelphia, Pa.
BROWN, MELVILLE C., . . . . .	Laramie, Wyo.
BROWN, STEWART, . . . . .	Baltimore, Md.
BROWN, TAYLOR E., . . . . .	Chicago, Ill.
BROWNE, ARTHUR S., . . . . .	Washington, D. C.
BROWNLEE, HIRAM, . . . . .	Marion, Ind.
BRUCE, HELM, . . . . .	Louisville, Ky.
BRUNO, RICHARD M., . . . . .	New York, N. Y.
BRYAN, P. TAYLOR, . . . . .	St. Louis, Mo.

BRYANT, WM. H., . . . . .	Denver, Col.
BUCHANAN, CHARLES J., . . . . .	Albany, N. Y.
BUCHANAN, JAMES, . . . . .	Trenton, N. J.
BUCHER, JOSEPH C., . . . . .	Lewisburg, Pa.
BUCKLER, WILLIAM H., . . . . .	Baltimore, Md.
BUDD, HENRY, . . . . .	Philadelphia, Pa.
BUIST, GEORGE LAMB, . . . . .	Charleston, S. C.
BUIST, HENRY, . . . . .	Charleston, S. C.
BULLARD, E. F., . . . . .	New York, N. Y.
BULLITT, THOMAS W., . . . . .	Louisville, Ky.
BULLOCK, A. G., . . . . .	Worcester, Mass.
BUMPUS, EVERETT C., . . . . .	Boston, Mass.
BURDICK, FRANCIS M., . . . . .	New York, N. Y.
BURK, W. D., . . . . .	Muscataine, Ia.
BURKE, JOHN F., . . . . .	Milwaukee, Wis.
BURKE, TIMOTHY F., . . . . .	Cheyenne, Wyo.
BURKET, JACOB F., . . . . .	Findlay, Ohio.
BURLEIGH, ALVIN, . . . . .	Plymouth, N. H.
BURNETT, WILLIAM H., . . . . .	Philadelphia, Pa.
BURNHAM, HENRY E., . . . . .	Manchester, N. H.
BURNHAM, TELFORD, . . . . .	Chicago, Ill.
BURNS, CHARLES H., . . . . .	Wilton, N. H.
BURROWS, J. B., . . . . .	Painesville, Ohio.
BURRY, WILLIAM, . . . . .	Chicago, Ill.
BUSBEE, FABIVS HAYWOOD, . . . . .	Raleigh, N. C.
BUSHNELL, ALLEN R., . . . . .	Madison, Wis.
BUSHNELL, T. H., . . . . .	Cleveland, Ohio.
BUTLER, CHARLES HENRY, . . . . .	New York, N. Y.
BUTLER, HUGH, . . . . .	Denver, Col.
BUTLER, NOBLE C., . . . . .	Indianapolis, Ind.
BUTLER, WILLIAM ALLEN, . . . . .	New York, N. Y.
BUTLER, WILLIAM ALLEN, JR., . . . . .	New York, N. Y.
BUTTON, FREDERICK H., . . . . .	Middlebury, Vt.
BUTTON, WM. H., . . . . .	Middlebury, Vt.
BUXTON, J. C., . . . . .	Winston, N. C.
BYRNE, JAMES, . . . . .	New York, N. Y.
CABELL, JAMES ALSTON, . . . . .	Richmond, Va.
CADWELL, JAMES P., . . . . .	Jefferson, Ohio.
CALHOUN, PAT., . . . . .	Cleveland, Ohio.
CALVIN, DELANO C., . . . . .	New York, N. Y.
CAMP, E. C., . . . . .	Knoxville, Tenn.
CAMPBELL, CHARLES H., . . . . .	Detroit, Mich.
CAMPBELL, CHARLES M., . . . . .	Denver, Col.
CAMPBELL, HENRY M., . . . . .	Detroit, Mich.
CAMPBELL, LEMUEL R., . . . . .	Nashville, Tenn.

CANADAY, WALTER, . . . . .	Boone, Ia.
CANN, J. FERRIS, . . . . .	Savannah, Ga.
CAREY, CHARLES H., . . . . .	Portland, Ore.
CAREY, FRANCIS K., . . . . .	Baltimore, Md.
CARLISLE, CALDERON, . . . . .	Washington, D. C.
CARPENTER, JAMES E., . . . . .	New York, N. Y.
CARR, WILLIAM F., . . . . .	Cleveland, Ohio.
CARROLL, WILLIAM H., . . . . .	Memphis, Tenn.
CARROLL, WILLIAM J., . . . . .	Omaha, Neb.
CARSON, HAMPTON L., . . . . .	Philadelphia, Pa.
CARSON, JOHN F., . . . . .	Indianapolis, Ind.
CARTER, CASSIUS, . . . . .	San Diego, Cal.
CARTER, JAMES C., . . . . .	New York, N. Y.
CARTER, WALTER S., . . . . .	New York, N. Y.
CARVER, EUGENE P., . . . . .	Boston, Mass.
CARY, ALFRED L., . . . . .	Milwaukee, Wis.
CATE, ALBION, . . . . .	Chicago, Ill.
CAVENDER, CHARLES, . . . . .	Leadville, Col.
CHADBOURNE, THOMAS L., . . . . .	Houghton, Mich.
CHAMBERLAIN, D. H., . . . . .	New York, N. Y.
CHAMBERS, FRANCIS T., . . . . .	Philadelphia, Pa.
CHAMBERS, SMILEY N., . . . . .	Indianapolis, Ind.
CHAMPLIN, EDGAR R., . . . . .	Boston, Mass.
CHAMPLIN, JOHN W., . . . . .	Grand Rapids, Mich.
CHANCELLOR, JUSTUS, . . . . .	Chicago, Ill.
CHANDLER, ALFRED D., . . . . .	Boston, Mass.
CHARLES, BENJAMIN H., . . . . .	St. Louis, Mo.
CHARLTON, WALTER G., . . . . .	Savannah, Ga.
CHASE, GEORGE, . . . . .	New York, N. Y.
CHASE, IRA A., . . . . .	Bristol, N. H.
CHEEVER, NOAH W., . . . . .	Ann Arbor, Mich.
CHICKERING, W. H., . . . . .	San Francisco, Cal.
CHOATÉ, JOSEPH H., . . . . .	New York, N. Y.
CHRISTIE, HARVEY L., . . . . .	St. Louis, Mo.
CHRISTY, GEORGE H., . . . . .	Pittsburg, Pa.
CHURCH, MELVILLE, . . . . .	Washington, D. C.
CLAPP, ROBERT P., . . . . .	Lexington, Mass.
CLARK, I. R., . . . . .	Boston, Mass.
CLARK, JAMES GARDNER, . . . . .	New Haven, Conn.
CLARK, MARTIN, . . . . .	Buffalo, N. Y.
CLARK, WILLIAM H., . . . . .	Dallas, Texas.
CLARKE, GEORGE E., . . . . .	South Bend, Ind.
CLARKE, JOHN H., . . . . .	Cleveland, Ohio.
CLIFFORD, CHARLES W., . . . . .	New Bedford, Mass.
CLIGGETT, JOHN, . . . . .	Mason City, Ia.

COCHRAN, ALEXANDER G., . . . . .	St. Louis, Mo.
COCKRAN, W. BOURKE, . . . . .	New York, N. Y.
COCKRILL, STERLING R., . . . . .	Little Rock, Ark.
COHEN, EMANUEL, . . . . .	Minneapolis, Minn.
COHN, M. M., . . . . .	Little Rock, Ark.
COKE, HENRY C., . . . . .	Dallas, Texas.
COKE, JOHN A., . . . . .	Richmond, Va.
COLBY, FRANCIS T., . . . . .	Chicago, Ill.
COLBY, JAMES F., . . . . .	Hanover, N. H.
COLIE, EDWARD M., . . . . .	Newark, N. J.
COLLIER, M. DWIGHT, . . . . .	New York, N. Y.
COLLINS, JAMES H., . . . . .	Columbus, Ohio.
COLLINS, PATRICK A., . . . . .	Boston, Mass.
COLSTON, EDWARD, . . . . .	Cincinnati, Ohio.
COLVILLE, FULTON, . . . . .	Atlanta, Ga.
CONANT, GEORGE A., . . . . .	Hartford, Conn.
CONGDON, OSSIAN M., . . . . .	Ithaca, N. Y.
CONRAD, HOLMES, . . . . .	Winchester, Va.
COOK, CHARLES SUMNER, . . . . .	Portland, Me.
COOK, E. S., . . . . .	Cleveland, Ohio.
COOK, WILLIAM W., . . . . .	New York, N. Y.
COOLEY, EDGAR A., . . . . .	Bay City, Mich.
COOLIDGE, WILLIAM H., . . . . .	Boston, Mass.
COOPER, EDMUND, . . . . .	Shelbyville, Tenn.
COPELAND, ALFRED M., . . . . .	Springfield, Mass.
CORBET, BURKE, . . . . .	Grand Forks, N. D.
CORBETT, FRANK E., . . . . .	Butte, Mont.
CORCORAN, JOHN W., . . . . .	Boston, Mass.
CORN, SAMUEL T., . . . . .	Cheyenne, Wyo.
CORTHELL, NELLIS E., . . . . .	Laramie, Wyo.
COTTER, JAMES E., . . . . .	Boston, Mass.
COTTER, JOHN W., . . . . .	Butte, Mont.
COWEN, JOHN K., . . . . .	Baltimore, Md.
COWIN, J. C., . . . . .	Omaha, Neb.
COWLES, ISRAEL T., . . . . .	Detroit, Mich.
COX, L. B., . . . . .	Portland, Ore.
CRAIG, JOHN E., . . . . .	Keokuk, Ia.
CRANE, ALBERT, . . . . .	Grand Rapids, Mich.
CRAPO, WILLIAM W., . . . . .	New Bedford, Mass.
CRAVENS, WILLIAM M., . . . . .	Fort Smith, Ark.
CRAWFORD, ANDREW, . . . . .	Chicago, Ill.
CROCKER, GEORGE G., . . . . .	Boston, Mass.
CROSBY, JAMES O., . . . . .	Garnavillo, Ia.
CROSS, DAVID, . . . . .	Manchester, N. H.
CROSS, E. J. D., . . . . .	Baltimore, Md.

CROVATT, A. J., . . . . .	Brunswick, Ga.
CULVER, M. EUGENE, . . . . .	Middletown, Conn.
CUMMING, JOSEPH B., . . . . .	Augusta, Ga.
CUMMINS, A. B., . . . . .	Des Moines, Ia.
CUNNEEN, JOHN, . . . . .	Buffalo, N. Y.
CUNNINGHAM, FREDERIC, . . . . .	Boston, Mass.
CUNNINGHAM, HENRY C., . . . . .	Savannah, Ga.
CUNNINGHAM, T. M., JR., . . . . .	Savannah, Ga.
CURTIS, HARRY C., . . . . .	Providence, R. I.
CURTIS, JULIUS B., . . . . .	Stamford, Conn.
CURTIS, WILLIAM S., . . . . .	St. Louis, Mo.
CUSHING, WILLIAM E., . . . . .	Cleveland, Ohio.
CUTCHEON, SULLIVAN M., . . . . .	Detroit, Mich.
CUYLER, THOMAS DEWITT, . . . . .	Philadelphia, Pa.
DABNEY, L. S., . . . . .	Boston, Mass.
DALE, RICHARD C., . . . . .	Philadelphia, Pa.
DANA, SAMUEL W., . . . . .	New Castle, Pa.
DANA, WILLIAM S., . . . . .	Turner's Falls, Mass.
DANAHER, FRANKLIN M., . . . . .	Albany, N. Y.
DANIELS, EDWARD, . . . . .	Indianapolis, Ind.
DANIELS, FRANCIS B., . . . . .	Chicago, Ill.
DART, HENRY P., . . . . .	New Orleans, La.
DAVIE, GEORGE M., . . . . .	Louisville, Ky.
DAVIES, JULIAN T., . . . . .	New York, N. Y.
DAVIES, WILLIAM GILBERT, . . . . .	New York, N. Y.
DAVIS, HENRY E., . . . . .	Washington, D. C.
DAVIS, HERBERT J., . . . . .	Chicago, Ill.
DAVIS, JAMES C., . . . . .	Keokuk, Ia.
DAVIS, JOHN, . . . . .	Lowell, Mass.
DAVIS, SIMON, . . . . .	Boston, Mass.
DAVIS, SYDNEY B., . . . . .	Terre Haute, Ind.
DAVIS, VERNON M., . . . . .	New York, N. Y.
DAVISON, CHARLES A., . . . . .	New York, N. Y.
DAWKINS, WALTER I., . . . . .	Baltimore, Md.
DAWSON, WILLIAM H., . . . . .	Baltimore, Md.
DEAN, O. H., . . . . .	Kansas City, Mo.
DECKER, WESTBROOK S., . . . . .	Denver, Col.
DEEMER, H. E., . . . . .	Red Oak, Ia.
DEERING, JAMES A., . . . . .	New York, N. Y.
DEERY, JOHN, . . . . .	Dubuque, Ia.
DELACY, JOHN F., . . . . .	Eastman, Ga.
DEMBITZ, LEWIS N., . . . . .	Louisville, Ky.
DEMOND, CHARLES M., . . . . .	New York, N. Y.
DEMPSEY, JAMES H., . . . . .	Cleveland, Ohio.
DENEEN, CHARLES S., . . . . .	Chicago, Ill.



DENÉGRE, GEORGE, . . . . .	New Orleans, La.
DENÉGRE, WALTER D., . . . . .	New Orleans, La.
DENISON, ARTHUR C., . . . . .	Grand Rapids, Mich.
DENT, THOMAS, . . . . .	Chicago, Ill.
DEPEW, CHAUNCEY M., . . . . .	New York, N. Y.
DEUEL, JOSEPH M., . . . . .	New York, N. Y.
DEWEESE, J. W., . . . . .	Lincoln, Neb.
DEWEY, HENRY S., . . . . .	Boston, Mass.
DICKINSON, DON M., . . . . .	Detroit, Mich.
DICKINSON, J. M., . . . . .	Chicago, Ill.
DICKINSON, M. F., JR., . . . . .	Boston, Mass.
DICKINSON, S. MEREDITH, . . . . .	Trenton, N. J.
DICKMAN, FRANKLIN J., . . . . .	Cleveland, Ohio.
DICKSON, SAMUEL, . . . . .	Philadelphia, Pa.
DILLARD, F. C., . . . . .	Sherman, Texas.
DILLAWAY, W. E. L., . . . . .	Boston, Mass.
DILLE, JOHN I., . . . . .	Des Moines, Ia.
DILLON, JOHN F., . . . . .	New York, N. Y.
DINES, TYSON S., . . . . .	Denver, Col.
DINNEEN, JOHN H., . . . . .	Baltimore, Md.
DIXON, WILLIAM W., . . . . .	Butte, Mont.
DOBSON, CHARLES L., . . . . .	Kansas City, Mo.
DODGE, FREDERIC, . . . . .	Boston, Mass.
DONALDSON, WILLIAM R., . . . . .	St. Louis, Mo.
DOS PASSOS, JOHN R., . . . . .	New York, N. Y.
DOTY, SPENCER C., . . . . .	New York, N. Y.
DOUGHERTY, J. HAMPDEN, . . . . .	New York, N. Y.
DOUGLAS, SAMUEL T., . . . . .	Detroit, Mich.
DOUGLAS, WAITER B., . . . . .	St. Louis, Mo.
DOUGLASS, JOHN W., . . . . .	Washington, D. C.
DOYLE, JOHN H., . . . . .	Toledo, Ohio.
DOYLE, LOUIS F., . . . . .	New York, N. Y.
DOYLE, PETER, . . . . .	Milwaukee, Wis.
DRIGGS, FREDERICK E., . . . . .	Detroit, Mich.
DUANE, RUSSELL, . . . . .	Philadelphia, Pa.
DUBIGNON, FLEMING G., . . . . .	Savannah, Ga.
DUDLEY, C. A., . . . . .	Des Moines, Ia.
DUELL, CHARLES H., (Washington, D. C.), . . . . .	Syracuse, N. Y.
DUFFIELD, HENRY M., . . . . .	Detroit, Mich.
DUNBAR JAMES R., . . . . .	Boston, Mass.
DUNCOMBE, JOHN F., . . . . .	Fort Dodge, Ia.
DURAND, LORENZO T., . . . . .	Saginaw, E. S., Mich.
DURBAN, FRANK A., . . . . .	Zanesville, Ohio.
DUVAL, BEN. T., . . . . .	Fort Smith, Ark.
DWIGHT, EDWARD F., . . . . .	New York, N. Y.

DYE, JOHN T., . . . . .	Indianapolis, Ind.
DYER, RICHARD N., . . . . .	New York, N. Y.
DYRENFORTH, PHILIP C., . . . . .	Chicago, Ill.
DYRENFORTH, WILLIAM H., . . . . .	Chicago, Ill.
EASTMAN, SAMUEL C., . . . . .	Concord, N. H.
EASTMAN, SIDNEY C., . . . . .	Chicago, Ill.
EATON, AMASA M., . . . . .	Providence, R. I.
EDMONSTON, WILLIAM F., . . . . .	Washington, D. C.
EICHORN, WILLIAM H., . . . . .	Bluffton, Ind.
ELDER, SAMUEL J., . . . . .	Boston, Mass.
ELIOT, EDWARD C., . . . . .	St. Louis, Mo.
ELLINWOOD, EVERETT E., . . . . .	Flagstaff, Ariz.
ELLIOTT, WILLIAM F., . . . . .	Indianapolis, Ind.
ELLIS, W. D., . . . . .	Atlanta, Ga.
ELY, JOHN J., . . . . .	Freehold, N. J.
EMERY, JOHN R., . . . . .	Morristown, N. J.
EMERY, LUCILLIUS A., . . . . .	Ellsworth, Me.
EMERY, WOODWARD, . . . . .	Cambridge, Mass.
ENDICOTT, WM. C., . . . . .	Danvers, Mass.
ERNST, GEORGE A. O., . . . . .	Boston, Mass.
ERWIN, R. G., . . . . .	Savannah, Ga.
ESTABROOK, GEORGE W., . . . . .	Boston, Mass.
ESTABROOK, HENRY D., . . . . .	Chicago, Ill.
EVANS, CHARLES B., . . . . .	Wilmington, Del.
EVANS, J. A., . . . . .	Pittsburg, Pa.
EVANS, ROWLAND, . . . . .	Indianapolis, Ind.
EVARTS, WILLIAM M., . . . . .	New York, N. Y.
FAIRBANKS, CHAS. W., . . . . .	Indianapolis, Ind.
FAIRCHILD, H. O., . . . . .	Green Bay, Wis.
FALL, GEORGE HOWARD, . . . . .	Malden, Mass.
FALLIGANT, ROBERT, . . . . .	Savannah, Ga.
FARQUHAR, GUY E., . . . . .	Pottsville, Pa.
FARRAR, EDGAR H., . . . . .	New Orleans, La.
FEARONS, GEORGE H., . . . . .	New York, N. Y.
FELLOWS, JOSEPH W., . . . . .	Manchester, N. H.
FENTON, HECTOR T., . . . . .	Philadelphia, Pa.
FENTRESS, JAMES, . . . . .	Chicago, Ill.
FERGUSON, E. A., . . . . .	Cincinnati, Ohio.
FERRIS, AARON A., . . . . .	Cincinnati, Ohio.
FESLER, JAMES WILLIAM, . . . . .	Indianapolis, Ind.
FIELD, HEMAN H., . . . . .	Chicago, Ill.
FIERO, J. NEWTON, . . . . .	Albany, N. Y.
FINKELNBURG, G. A., . . . . .	St. Louis, Mo.
FISH, FREDERICK P., . . . . .	Boston, Mass.
FISH, JOHN T., . . . . .	Milwaukee, Wis.

FISHBACK, W. P., . . . . .	Indianapolis, Ind.
FISHER, ROBERT J., . . . . .	Washington, D. C.
FISHER, SAMUEL T., . . . . .	Washington D. C.
FISHER, WILLIAM A., . . . . .	Baltimore, Md.
FISHER, WILLIAM RIGHTER, . . . . .	Philadelphia, Pa.
FISSE, WILLIAM E., . . . . .	St. Louis, Mo.
FITZGERALD, JOHN C., . . . . .	Grand Rapids, Mich.
FLANDERS, JAMES G., . . . . .	Milwaukee, Wis.
FLANDRAU, CHARLES E., . . . . .	St. Paul, Minn.
FLEISCHMANN, SIMON, . . . . .	Buffalo, N. Y.
FLEMING, LORENZO D., . . . . .	New York, N. Y.
FLETCHER, D. U., . . . . .	Jacksonville, Fla.
FLORANCE, ERNEST T., . . . . .	New Orleans, La.
FLOWER, JAMES M., . . . . .	Chicago, Ill.
FOLLETT, ALFRED DEWEY, . . . . .	Marietta, Ohio.
FOLLETT, MARTIN DEWEY, . . . . .	Marietta, Ohio.
FORBES, FRANCIS, . . . . .	New York, N. Y.
FORMAN, BENJAMIN RICE, . . . . .	New Orleans, La.
FORSTER, GEORGE M., . . . . .	Spokane, Wash.
FORT, J. FRANKLIN, . . . . .	Newark, N. J.
FOSTER, ALFRED D., . . . . .	Boston, Mass.
FOSTER, CHARLES E., . . . . .	Washington, D. C.
FOSTER, REGINALD, . . . . .	Boston, Mass.
FOSTER, ROGER, . . . . .	New York, N. Y.
FOWLER, A. C., . . . . .	St. Louis, Mo.
FOWLER, BENJAMIN F., . . . . .	Cheyenne, Wyo.
FOX, AUSTEN G., . . . . .	New York, N. Y.
FOX, JABEZ, . . . . .	Boston, Mass.
FRALEY, JOSEPH C., . . . . .	Philadelphia, Pa.
FRAWLEY, THOMAS F., . . . . .	Eau Claire, Wis.
FRENCH, WILLIAM B., . . . . .	Boston, Mass.
FREY, PHILIP W., . . . . .	Evansville, Ind.
FRINK, J. S. H., . . . . .	Portsmouth, N. H.
FROST, EDWARD W., . . . . .	Milwaukee, Wis.
FULLER, CLIFFORD W., . . . . .	Cleveland Ohio.
FULLER, GEORGE, . . . . .	San Diego, Cal.
FULLER, HORACE W., . . . . .	Boston, Mass.
FURNESS, WILLIAM ELIOT, . . . . .	Chicago, Ill.
GAGER, EDWIN B., . . . . .	Derby, Conn.
GAINES, R. R., . . . . .	Austin, Texas.
GALLAGHER, CHARLES T., . . . . .	Boston, Mass.
GANS, EDGAR H., . . . . .	Baltimore, Md.
GANTT, JAMES B., . . . . .	Jefferson City, Mo.
GARDINER, CHARLES A., . . . . .	New York, N. Y.
GARFIELD, HARRY A., . . . . .	Cleveland, Ohio.

GARFIELD, JAMES R., . . . . .	Cleveland, Ohio.
GARGAN, THOMAS J., . . . . .	Boston, Mass.
GARLAND, DAVID S., . . . . .	Northport, N. Y.
GARLAND, SPOTTSWOOD, . . . . .	Wilmington, Del.
GARNETT, THEODORE S., . . . . .	Norfolk, Va.
GARRARD, LOUIS F., . . . . .	Columbus, Ga.
GARRARD, WILLIAM, . . . . .	Savannah, Ga.
GARRETON, A. Q., . . . . .	Jersey City, N. J.
GARTSIDE, JOHN M., . . . . .	Chicago, Ill.
GAST, CHARLES E., . . . . .	Pueblo, Col.
GEER, HARRISON, . . . . .	Detroit, Mich.
GEYELIN, HENRY LAUSSEAT, . . . . .	Philadelphia, Pa.
GIBBONS, JOHN, . . . . .	Chicago, Ill.
GIBBS, CLINTON B., . . . . .	Buffalo, N. Y.
GIBSON, JAMES, . . . . .	Kansas City, Mo.
GIBSON, JAMES A., . . . . .	Los Angeles, Cal.
GIBSON, WILLIAM K., . . . . .	Riverside, Cal.
GIDDINGS, CHARLES, . . . . .	Great Barrington, Mass.
GIFFORD, LIVINGSTON, . . . . .	New York, N. Y.
GILBERT, GEORGE G., . . . . .	Shelbyville, Ky.
GILBERT, LYMAN D., . . . . .	Harrisburg, Pa.
GILLEN, WILLIAM W., . . . . .	Jamaica, N. Y.
GILLIAM, MARSHALL M., . . . . .	Richmond, Va.
GILLMER, JAMES I., . . . . .	Warren, Ohio.
GILMORE, JAMES H., . . . . .	Marion, Va.
GILSON, N. S., . . . . .	Fond du Lac, Wis.
GLASGOW, WILLIAM A., JR., . . . . .	Roanoke, Va.
GLEASON, JOHN H., . . . . .	Albany, N. Y.
GLENN, R. B., . . . . .	Winston, N. C.
GOBLE, L. SPENCER, . . . . .	Newark, N. J.
GOEBEL, WILLIAM, . . . . .	Covington, Ky.
GOFF, FREDERICK H., . . . . .	Cleveland, Ohio.
GOODELL, EDWIN B., . . . . .	Montclair, N. J.
GOODWIN, FRANK, . . . . .	Boston, Mass.
GOULD, JOHN H., . . . . .	Delphi, Ind.
GOULD, ROBERT S., . . . . .	Austin, Texas.
GOULDER, HARVEY D., . . . . .	Cleveland, Ohio.
GRACE H. H., . . . . .	West Superior, Wis.
GRAHAM, GEORGE S., . . . . .	Philadelphia, Pa.
GRANGER, MOSES M., . . . . .	Zanesville, Ohio.
GRANGER, SHERMAN M., . . . . .	Zanesville, Ohio.
GRANT, ALEXANDER, JR., . . . . .	Newark, N. J.
GRAVES, CHARLES A., . . . . .	Lexington, Va.
GRAY, GEORGE, . . . . .	Wilmington, Del.
GRAY, JOHN C., . . . . .	Boston, Mass.

GREELY, ARTHUR P. (Washington, D. C.), . . .	Concord, N. H.
GREEN, BENJAMIN W., . . . . .	Emporium, Pa.
GREENE, CHARLES J., . . . . .	Omaha, Neb.
GREENE, FREDERICK L., . . . . .	Greenfield, Mass.
GREENE, GEORGE G., . . . . .	Green Bay, Wis.
GREGG, MAURICE, . . . . .	Baltimore, Md.
GREGORY, CHARLES NOBLE, . . . . .	Madison, Wis.
GREGORY, HENRY STUART, . . . . .	Wallace, Idaho.
GREGORY, STEPHEN S., . . . . .	Chicago, Ill.
GREY, SAMUEL H., . . . . .	Camden, N. J.
GRIFFIN, S., . . . . .	Bedford City, Va.
GRIFFITH, WARREN G., . . . . .	Philadelphia, Pa.
GRIGGS, JOHN W., (Washington, D. C.), . . . .	Paterson, N. J.
GRINNELL, W. MORTON, . . . . .	New York, N. Y.
GROOT, GEORGE A., . . . . .	Cleveland, Ohio.
GROSSCUP, PETER S., . . . . .	Chicago, Ill.
GRUBB, IGNATIUS C., . . . . .	Wilmington, Del.
GRUBBS, CHARLES, S., . . . . .	Louisville, Ky.
GUERNSEY, NATHANIEL T., . . . . .	Des Moines, Ia.
GUNCKEL, LEWIS B., . . . . .	Dayton, Ohio.
GUNTER, JULIUS C., . . . . .	Trinidad, Col.
GUTHRIE, GEORGE W., . . . . .	Pittsburg, Pa.
GUTHRIE, WILLIAM D., . . . . .	New York, N. Y.
GUY, JACKSON, . . . . .	Richmond, Va.
HADDEN, ALEXANDER, . . . . .	Cleveland, Ohio.
HAGERMAN, FRANK, . . . . .	Kansas City, Mo.
HAGERMAN, JAMES, . . . . .	St. Louis, Mo.
HAGNER, ALEXANDER B., . . . . .	Washington, D. C.
HAHN, WILLIAM J., . . . . .	Minneapolis, Minn.
HALE, CLARENCE, . . . . .	Portland, Me.
HALL, BORDMAN, . . . . .	Boston, Mass.
HALL, EDMUND, . . . . .	Detroit, Mich.
HALL, HARRY H., . . . . .	New Orleans, La.
HALL, MATTHEW A., . . . . .	Omaha, Neb.
HALL, THOMAS L., . . . . .	Ord, Neb.
HALL, THOMAS W., . . . . .	Baltimore, Md.
HALL, WILLIAM M., JR., . . . . .	Pittsburg, Pa.
HALLETT, MOSES, . . . . .	Denver, Col.
HAMILL, HUGH H., . . . . .	Trenton, N. J.
HAMILTON, ALEXANDER, . . . . .	Petersburg, Va.
HAMILTON, GEORGE EARNEST, . . . . .	Washington, D. C.
HAMLIN, CHARLES, . . . . .	Bangor, Me.
HAMLIN, HANNIBAL E., . . . . .	Ellsworth, Me.
HAMLIN, JOHN H., . . . . .	Chicago, Ill.
HAMMOND, WM. S., . . . . .	Altoona, Pa.

HANCHETT, BENTON, . . . . .	Saginaw, W. S., Mich.
HANFORD, C. H., . . . . .	Seattle, Wash.
HANSEN, OTTO R., . . . . .	Milwaukee, Wis.
HARDING, CHARLES F., . . . . .	Chicago, Ill.
HARKLESS, JAMES H., . . . . .	Kansas City, Mo.
HARLAN, HENRY D., . . . . .	Baltimore, Md.
HARLAND, WALTER M., . . . . .	Chicago, Ill.
HARLEY, CHARLES F., . . . . .	Baltimore, Md.
HARMON, HENRY A., . . . . .	Detroit, Mich.
HARMON, JUDSON, . . . . .	Cincinnati, Ohio
HARPER, JACOB CHANDLER, . . . . .	Cincinnati, Ohio.
HARRIMAN, EDWARD AVERY, . . . . .	Chicago, Ill.
HARRIS, STEPHEN R., . . . . .	Bucyrus, Ohio.
HARRIS, W. O., . . . . .	Louisville, Ky.
HARRISON, BENJAMIN, . . . . .	Indianapolis, Ind.
HARRISON, LYNDE, . . . . .	New Haven, Conn.
HARRISON, RICHARD A., . . . . .	Columbus, Ohio.
HARRITY, WILLIAM F., . . . . .	Philadelphia, Pa.
HARSHA, WALTER S., . . . . .	Detroit, Mich.
HART, W. O., . . . . .	New Orleans, La.
HARTIGAN, MICHEL A., . . . . .	Hastings, Neb.
HARTSHORNE, CHARLES H., . . . . .	Jersey City, N. J.
HARWOOD, N. S., . . . . .	Lincoln, Neb.
HARWOOD, T. F., . . . . .	Gonzales, Texas.
HASKELL, FREDERICK F., . . . . .	Boston, Mass.
HASKELL, THOMAS H., . . . . .	Portland, Me.
HATCH, EDWARD W., . . . . .	New York, N. Y.
HATCH, REUBEN, . . . . .	Grand Rapids, Mich.
HATHAWAY, HENRY B., . . . . .	New York, N. Y.
HATTON, GOODRICH, . . . . .	Portsmouth, Va.
HAWES, GILBERT RAY, . . . . .	New York, N. Y.
HAWKESWORTH, R. W., . . . . .	New York, N. Y.
HAWKINS, GILBERT S., . . . . .	Bel Air, Md.
HAWKINS, ROSCOE O., . . . . .	Indianapolis, Ind.
HAYDEN, GEORGE, . . . . .	Ishpeming, Mich.
HAYDEN, JAMES H., . . . . .	Washington, D. C.
HAYES, THOMAS G., . . . . .	Baltimore, Md.
HAYNE, ROBERT Y., . . . . .	San Francisco, Cal.
HEBARD, FREDERIC S., . . . . .	Chicago, Ill.
HEERMANCE, MARTIN, . . . . .	Poughkeepsie, N. Y.
HEIGES, GEORGE W., . . . . .	York, Pa.
HELM, JAMES P., . . . . .	Louisville, Ky.
HEMENWAY, ALFRED, . . . . .	Boston, Mass.
HEMPHILL, JOSEPH, . . . . .	West Chester, Pa.
HENDERSON, J. B., . . . . .	Washington, D. C.

HENDERSON, J. H.,	Indianola, Ia.
HENDERSON, JOHN M.,	Cleveland, Ohio.
HENDERSON, ROBERT R.,	Cumberland, Md.
HENDRICK, W. J.,	Frankfort, Ky.
HENRY, WM. WIRT,	Richmond, Va.
HENSEL, W. U.,	Lancaster, Pa.
HEPBURN, CHARLES M.,	Cincinnati, Ohio.
HERENDEN, EDWARD G.,	Elmira, N. Y.
HERNDON, JOHN C.,	Prescott, Arizona.
HEROD, WILLIAM PIBLE,	Indianapolis, Ind.
HERRICK, G. E.,	Cleveland, Ohio.
HERRICK, JOHN J.,	Chicago, Ill.
HERRINGTON, CASS E.,	Denver, Col.
HIESTER, ISAAC,	Reading, Pa.
HIGGINBOTHAM, C. C.,	Buckhannon, W. Va.
HIGGINS, ANTHONY,	Wilmington, Del.
HIGGINS, FRANK M.,	Limerick, Me.
HILL, JOSEPH M.,	Fort Smith, Ark.
HILL, LYSANDER,	Chicago, Ill.
HILL, R. A.,	Oxford, Miss.
HILL, THOMAS N.,	Halifax, N. C.
HILL, WALTER B.,	Macon, Ga.
HILLES, WILLIAM S.,	Wilmington, Del.
HINE, LEMON G.,	Washington, D. C.
HINES, CLARK B.,	Belleville, Ohio.
HINKLEY, JOHN,	Baltimore, Md.
HISKY, THOMAS FOLEY,	Baltimore, Md.
HITCHCOCK, HENRY,	St. Louis, Mo.
HOADLY, GEORGE,	New York, N. Y.
HOADLY, GEORGE, JR.,	Cincinnati, Ohio.
HOGAN, JOHN W.,	Providence, R. I.
HOLDOM, JESSE,	Chicago, Ill.
HOLMES, DANIEL B.,	Kansas City, Mo.
HOPKINS, E. H.,	Cleveland, Ohio.
HOPKINS, GEORGE H.,	Detroit, Mich.
HOPKINS, W. S. B.,	Worcester, Mass.
HORNBLOWER, WILLIAM B.,	New York, N. Y.
HORNER, JOHN J.,	Helena, Ark.
HOTCHKISS, WILLIAM HORACE,	Buffalo, N. Y.
HOULTON, SAMUEL C.,	Baltimore, Md.
HOWE, ELMER P.,	Boston, Mass.
HOWE, WILLIAM WIRT,	New Orleans, La.
HOWLAND, PAUL,	Cleveland, Ohio.
HOWRY, CHARLES B. (Washington, D. C.),	Oxford, Miss.
HOWSON, CHARLES,	Philadelphia, Pa.

HOYE, STEPHEN M., . . . . .	Brooklyn, N. Y.
HOYT, HIRAM J., . . . . .	Muskegon, Mich.
HOYT, JAMES H., . . . . .	Cleveland, Ohio.
HUBBARD, HARRY, . . . . .	New York, N. Y.
HUBBARD, THOMAS H., . . . . .	New York, N. Y.
HUBBARD, WILLIAM P., . . . . .	Wheeling, W. Va.
HUEY, SAMUEL B., . . . . .	Philadelphia, Pa.
HUFFCUT, E. W., . . . . .	Ithaca, N. Y.
HUGHES, BENJAMIN F., . . . . .	Philadelphia, Pa.
HUGHES, CHARLES E., . . . . .	New York, N. Y.
HUGHES, CHARLES J., JR., . . . . .	Denver, Col.
HUGHES, E. C., . . . . .	Seattle Wash.
HUGHES, ROBERT M., . . . . .	Norfolk, Va.
HUGHES, THOMAS, . . . . .	Baltimore, Md.
HULL, GEORGE S., . . . . .	Buffalo, N. Y.
HUNSAKER, WILLIAM J., . . . . .	Los Angeles, Cal.
HUNT, CARLETON, . . . . .	New Orleans, La.
HUNT, FREEMAN, . . . . .	Boston, Mass.
HUNT, SAMUEL F., . . . . .	Cincinnati, Ohio.
HUNTER, CHARLES F., . . . . .	Milwaukee, Wis.
HUNTER, ERNEST HOWARD, . . . . .	Philadelphia, Pa.
HURD, HARVEY B., . . . . .	Chicago, Ill.
HURLBUTT, HENRY F., . . . . .	Lynn, Mass.
HUTCHINSON, JOHN F., . . . . .	Parkersburg, W. Va.
HYDE, WESLEY W., . . . . .	Grand Rapids, Mich.
HYDE, WILLIAM W., . . . . .	Hartford, Conn.
INGALSBE, GRENVILLE M., . . . . .	Sandy Hill, N. Y.
INGERSOLL, HENRY H., . . . . .	Knoxville, Tenn.
INGLER, FRANCIS M., . . . . .	Indianapolis, Ind.
ISAACS, M. S., . . . . .	New York, N. Y.
ISHAM, EDWARD S., . . . . .	Chicago, Ill.
ISHAM, PIERREPONT, . . . . .	Chicago, Ill.
JACKSON, ROBERT F., . . . . .	Nashville, Tenn.
JACOB, EPHRAIM A., . . . . .	New York, N. Y.
JACOKES, JAMES A., . . . . .	Pontiac, Mich.
JAHN, CARL G., . . . . .	Columbus, Ohio.
JAMES, FRANCIS B., . . . . .	Cincinnati, Ohio.
JAMESON, OVID B., . . . . .	Indianapolis, Ind.
JANUARY, WILLIAM L., . . . . .	Detroit, Mich.
JAYNE, H. LABARRE, . . . . .	Philadelphia, Pa.
JEFFRIS, MALCOLM G., . . . . .	Janesville, Wis.
JELKE, FERDINAND, JR., . . . . .	Cincinnati, Ohio.
JELLINEK, EDWARD L., . . . . .	Buffalo, N. Y.
JENCKES, THOMAS A., . . . . .	Providence, R. I.
JENKINS, JAMES G., . . . . .	Milwaukee, Wis.



JENNINGS, ANDREW J., . . . . .	Fall River, Mass.
JEROME, THOMAS SPENCER, . . . . .	Detroit, Mich.
JEWETT, JOHN N., . . . . .	Chicago, Ill.
JOHNSON, BENJAMIN N., . . . . .	Boston, Mass.
JOHNSON, D. H., . . . . .	Milwaukee, Wis.
JOHNSON, HOMER H., . . . . .	Cleveland, Ohio.
JOHNSON, M. B., . . . . .	Cleveland, Ohio.
JOHNSON, SIMEON M., . . . . .	Cincinnati, Ohio.
JOHNSTON, THOMAS J., . . . . .	New York, N. Y.
JOHNSTONE, GEORGE, . . . . .	Newberry, S. C.
JOLINE, ADRIAN H., . . . . .	New York, N. Y.
JONES, ASAH EL W., . . . . .	Youngstown, Ohio.
JONES, BURR W., . . . . .	Madison, Wis.
JONES, J. LEVERING, . . . . .	Philadelphia, Pa.
JONES, LEONARD A., . . . . .	Boston, Mass.
JONES, RANKIN D., . . . . .	Cincinnati, Ohio.
JONES, RICHMOND L., . . . . .	Reading, Pa.
JONES, W. MARTIN, . . . . .	Rochester, N. Y.
JOSEPH, EMIL, . . . . .	Cleveland, Ohio.
JOSS, FREDERICK H., . . . . .	Indianapolis Ind.
JUDSON, FREDERICK N., . . . . .	St. Louis, Mo.
JUNKIN, FRANCIS T. A., . . . . .	Chicago, Ill.
KARNES, J. V. C., . . . . .	Kansas City, Mo.
KAY, JAMES I., . . . . .	Pittsburg, Pa.
KAY, WILLIAM E., . . . . .	Brunswick, Ga.
KEASBEY, EDWARD Q., . . . . .	Newark, N. J.
KEATOR, JOHN F., . . . . .	Philadelphia, Pa.
KEENER, WILLIAM A., . . . . .	New York, N. Y.
KEENEY, WILLARD F., . . . . .	Grand Rapids, Mich.
KEHR, EDWARD C., . . . . .	St. Louis, Mo.
KEITH, IRA B., . . . . .	Lynn, Mass.
KELLEN, WILLIAM V., . . . . .	Boston, Mass.
KELLOGG, HERBERT H., . . . . .	New York, N. Y.
KELLOGG, L. LAFLIN, . . . . .	New York, N. Y.
KELLOGG, STEPHEN W., . . . . .	Waterbury, Conn.
KELLY, RONALD, . . . . .	Detroit, Mich.
KENNA, EDWARD D., . . . . .	Chicago, Ill.
KENNEDY, JOHN C., . . . . .	Boston, Mass.
KENNON, NEWELL K., . . . . .	St. Clairsville, Ohio.
KENNY, EDWARD, . . . . .	Newark, N. J.
KENT, CHARLES A., . . . . .	Detroit, Mich.
KENYON, WILLIAM H., . . . . .	New York, N. Y.
KERN, JOHN W., . . . . .	Indianapolis, Ind.
KERNAN, THOMAS J., . . . . .	Baton Rouge, La.
KETCHAM, WILLIAM A., . . . . .	Indianapolis, Ind.

KIDDLE, ALFRED W.,	New York, N. Y.
KILVERT, THOMAS,	New York, N. Y.
KING, GEORGE A.,	Washington, D. C.
KING, S. H.,	St. Louis, Mo.
KINGSLEY, WILLARD,	Grand Rapids, Mich.
KINKAID, M. P.,	O'Neill, Neb.
KINNE, EDWARD D.,	Ann Arbor, Mich.
KINNE, L. G.,	Des Moines, Ia.
KIRLIN, J. PARKER,	New York, N. Y.
KITCHEL, STANLEY R.,	Minneapolis, Minn.
KLEIN, JACOB,	St. Louis, Mo.
KLINE, VIRGIL P.,	Cleveland, Ohio.
KNAPP, HOWARD H.,	Bridgeport, Conn.
KNAPPEN, LOYAL E.,	Grand Rapids, Mich.
KNIGHT, CHARLES H.,	Exeter, N. H.
KNIGHT, JESSE,	Cheyenne, Wyo.
KNIGHT, W. J.,	Dubuque, Ia.
KNOTT, A. LEO,	Baltimore, Md.
KNOX, CHARLES H.,	New York, N. Y.
KNOX, P. C.,	Pittsburg, Pa.
KORBLY, CHARLES A.,	Indianapolis, Ind.
KRAUTHOFF, L. C.,	Chicago, Ill.
KRETZINGER, GEORGE W.,	Chicago, Ill.
KRUTTSCHNITT, ERNEST B.,	New Orleans, La.
KULP, GEORGE B.,	Wilkesbarre, Pa.
LACEY, JOHN W.,	Cheyenne, Wyo.
LACKNER, FRANCIS,	Chicago, Ill.
LADD, BARSON S.,	Boston, Mass.
LADD, NATH. W.,	Boston, Mass.
LADD, SANFORD B.,	Kansas City, Mo.
LAMAR, JOSEPH R.,	Augusta, Ga.
LAMB, SAMUEL O.,	Greenfield, Mass.
LAMBERT, TAILMADGE A.,	Washington, D. C.
LAMBERTON, C. L.,	New York, N. Y.
LAMBERTON, WILLIAM B.,	Harrisburg, Pa.
LANCASTER, CHARLES C.,	Washington, D. C.
LANCASTER, JOSEPH CAMPBELL,	Philadelphia, Pa.
LANE, J. CLARENCE,	Hagerstown, Md.
LANNING, WILLIAM M.,	Trenton, N. J.
LARNER, JOHN B.,	Washington, D. C.
LATHROP, GARDINER,	Kansas City, Mo.
LAWRENCE, JAMES,	Cleveland, Ohio.
LAWSON, JOHN D.,	Columbia, Mo.
LAWTON, ALEXANDER R.,	Savannah, Ga.
LEA, OVERTON,	Nashville, Tenn.

LEACH, J. GRANVILLE, . . . . .	Philadelphia, Pa.
LEAKEN, WILLIAM R., . . . . .	Savannah, Ga.
LEAKIN, J. WILSON, . . . . .	Baltimore, Md.
LEAR, HENRY, . . . . .	Doylestown, Pa.
LEAVITT, JOHN BROOKS, . . . . .	New York, N. Y.
LECKIE, A. E. L., . . . . .	Washington, D. C.
LEE, BLAIR, . . . . .	Washington, D. C.
LEE, BLEWETT, . . . . .	Chicago, Ill.
LEGÈNDRE, JAMES, . . . . .	New Orleans, La.
LEGG, J. H. C., . . . . .	Centreville, Md.
LEHMAN, FRED. W., . . . . .	St. Louis, Mo.
LENAHAN, JOHN T., . . . . .	Wilkesbarre, Pa.
LESH, U. S., . . . . .	Huntington, Ind.
LEVINSON, S. O., . . . . .	Chicago, Ill.
LEVIS, HOWARD C., . . . . .	Schenectady, N. Y.
LEWENTHAL, A., JR., . . . . .	Cleveland, Ohio.
LEWIS, H. M., . . . . .	Madison, Wis.
LEWIS, JAMES M., . . . . .	St. Louis, Mo.
LEWIS, LUNSFORD L., . . . . .	Richmond, Va.
LEWIS, W. DRAPER, . . . . .	Philadelphia, Pa.
LIBBY, CHARLES F., . . . . .	Portland, Me.
LIDDON, BENJ. S., . . . . .	Pensacola, Fla.
LIGHTNER, CLARENCE A., . . . . .	Detroit, Mich.
LILLIBRIDGE, WILLARD M., . . . . .	Detroit, Mich.
LINDSAY, WILLIAM, . . . . .	Frankfort, Ky.
LINDSEY, PHILIP, . . . . .	Dallas, Texas.
LIONBERGER, ISAAC H., . . . . .	St. Louis, Mo.
LITTLEFIELD, CHARLES E., . . . . .	Rockland, Me.
LOCKE, JOSEPH A., . . . . .	Portland, Me.
LOESCH, FRANK J., . . . . .	Chicago, Ill.
LOGAN, JAMES A., . . . . .	Philadelphia, Pa.
LOGAN, WALTER S., . . . . .	New York, N. Y.
LONDON, ALEXANDER T., . . . . .	Birmingham, Ala.
LORE, CHARLES B., . . . . .	Wilmington, Del.
LOVATT, EDWARD T., . . . . .	New York, N. Y.
LOVELAND, FRANK O., . . . . .	Cincinnati, Ohio.
LOWDEN, FRANK O., . . . . .	Chicago, Ill.
LOWNDES, LLOYD, . . . . .	Cumberland, Md.
LUDWIG, JOHN C., . . . . .	Milwaukee, Wis.
LUNT, HORACE G., . . . . .	Colorado Springs, Col.
LYON, ADRIAN, . . . . .	Perth Amboy, N. J.
LYONS, JAMES, . . . . .	Richmond, Va.
MACFARLAND, W. W., . . . . .	New York, N. Y.
MACK, JULIAN W., . . . . .	Chicago, Ill.
MACKALL, THOMAS B., . . . . .	Baltimore, Md.

MACKALL, WILLIAM W.,	Savannah, Ga.
MACKOY, WILLIAM H.,	Cincinnati, Ohio.
MACPHERSON, ERNEST,	Louisville, Ky.
MADDOX, SAMUEL,	Washington, D. C.
MADILL, GEORGE A.,	St. Louis, Mo.
MAFFETT, JAMES T.,	Clarion, Pa.
MALLORY, JAMES A.,	Milwaukee, Wis.
MALONE, JAMES H.,	Memphis, Tenn.
MALONE, THOS. H.,	Nashville, Tenn.
MANDERSON, CHARLES F.,	Omaha, Neb.
MANNING, WILLIAM J.,	Chicago, Ill.
MARBURY, WILLIAM L.,	Baltimore, Md.
MARKLEY, J. E. E.,	Mason City, Ia.
MARKS, ALBERT D.,	Nashville, Tenn.
MARR, ROBERT H., JR.,	New Orleans, La.
MARTIN, FRANCIS,	Falls City, Neb.
MARTIN, HORACE H.,	Chicago, Ill.
MARTIN, J. WILLIS,	Philadelphia, Pa.
MARTINDALE, CHARLES,	Indianapolis, Ind.
MARTYN, CHAUNCEY W.,	Chicago, Ill.
MARVIN, U. L.,	Akron, Ohio.
MASON, JOHN T. (JOHN T. MASON, R.),	Baltimore, Md.
MASSEY, LOUIS C.,	Orlando, Fla.
MATHER, ROBERT,	Chicago, Ill.
MATTHEWS, C. BENTLEY,	Cincinnati, Ohio.
MAURO, PHILIP,	Washington, D. C.
MAXWELL, LAWRENCE, JR.,	Cincinnati, Ohio.
MAY, HENRY F.,	Denver, Col.
MAYHEW, ALEXANDER E.,	Wallace, Idaho.
MECHEM, FLOYD R.,	Ann Arbor, Mich.
MEDDAUGH, ELIJAH W.,	Detroit, Mich.
MELDRIM, P. W.,	Savannah, Ga.
MELOY, WILLIAM A.,	Washington, D. C.
MERCER, GEORGE GLUYAS,	Philadelphia, Pa.
MERCUR, RODNEY A.,	Towanda, Pa.
MERRICK, CHARLES D.,	Parkersburg, W. Va.
MERRICK, EDWIN T.,	New Orleans, La.
MERRICK, GEORGE PECK,	Chicago, Ill.
MERRILL, JOHN HOUSTON,	Philadelphia, Pa.
MERVINE, NICHOLAS P.,	Altoona, Pa.
MESTREZAT, S. LESLIE,	Uniontown, Pa.
MILBURN, JOHN G.,	Buffalo, N. Y.
MILLER, AUGUSTUS S.,	Providence, R. I.
MILLER, B. K.,	Milwaukee, Wis.
MILLER, CHARLES W.,	Goshen, Ind.

MILLER, E. SPENCER, . . . . .	Philadelphia, Pa.
MILLER, FRANK H, . . . . .	Augusta, Ga.
MILLER, FRANK H., JR., . . . . .	Augusta, Ga.
MILLER, GEORGE P., . . . . .	Milwaukee, Wis.
MILLER, JOHN S., . . . . .	Chicago, Ill.
MILLER, N. DUBOIS, . . . . .	Philadelphia, Pa.
MILLER, PEYTON F., . . . . .	Albany, N. Y.
MILLER, T. S., . . . . .	Dallas, Texas.
MILLER, WILLIAM J., . . . . .	Washington, D. C.
MILLER, WILLIAM K., . . . . .	Augusta, Ga.
MILLER, W. W., . . . . .	New York, N. Y.
MILLIKEN, JOHN D., . . . . .	McPherson, Kan.
MILNOR, M. CLEILAND, . . . . .	New York, N. Y.
MITCHELL, CHARLES E., . . . . .	New York, N. Y.
MITCHELL, JOHN H., . . . . .	La Plata, Md.
MOFFIT, JOHN T., . . . . .	Tipton, Ia.
MONROE, CHARLES, . . . . .	Los Angeles, Cal.
MONTGOMERY, CARROLL S., . . . . .	Omaha, Neb.
MONTGOMERY, OSCAR H., . . . . .	Seymour, Ind.
MONTGOMERY, ROBERT M., . . . . .	Lansing, Mich.
MOORE, JOHN BASSETT, . . . . .	New York, N. Y.
MOORE, JOSEPH B., . . . . .	Lansing, Mich.
MOORE, WILLIAM A., . . . . .	Detroit, Mich.
MOORE, WILLIAM V., . . . . .	Detroit, Mich.
MOORES, CHARLES W., . . . . .	Indianapolis, Ind.
MOORES, MERRILL, . . . . .	Indianapolis, Ind.
MOOT, ADELBERT, . . . . .	Buffalo, N. Y.
MORDECAI, T. MOULTRIE, . . . . .	Charleston, S. C.
MORGAN, RANDAL, . . . . .	Philadelphia, Pa.
MORRIS, HOWARD, . . . . .	Milwaukee, Wis.
MORRIS, JOHN JR., . . . . .	Ft. Wayne, Ind.
MORRIS, M. F., . . . . .	Washington, D. C.
MORRIS, NATHAN, . . . . .	Indianapolis, Ind.
MORRIS, THOMAS J., . . . . .	Baltimore, Md.
MORRISON, ROBERT E., . . . . .	Prescott, Ariz.
MORSE, A. PORTER, . . . . .	Washington, D. C.
MORSE, GODFREY, . . . . .	Boston, Mass.
MORSE, ROBERT M., . . . . .	Boston, Mass.
MORSE, WALDO G., . . . . .	New York, N. Y.
MORTON, J. R., . . . . .	Lexington Ky.
MOSES, ADOLPH, . . . . .	Chicago, Ill.
MUHLENBERG, HENRY A., . . . . .	Reading, Pa.
MULLIN, MICHAEL A., . . . . .	Baltimore, Md.
MUNGER, W. H., . . . . .	Fremont, Neb.
MUNFORD, BEVERLEY B., . . . . .	Richmond, Va.

MUNROE, WILLIAM A., . . . . .	Boston, Mass.
MUNSON, C. LARUE, . . . . .	Williamsport, Pa.
MUNSON, GILBERT D., . . . . .	Zanesville, Ohio.
MUSGRAVE, HARRISON, . . . . .	Chicago, Ill.
MYERS, JAMES J., . . . . .	Boston, Mass.
MYERS, NATHANIEL, . . . . .	New York, N. Y.
MYERS, QUINCY A., . . . . .	Logansport, Ind.
MICALPIN, HENRY, . . . . .	Savannah, Ga.
MCCAULEY, E. HOWARD, . . . . .	New Orleans, La.
MCCAMMON, JOSEPH K., . . . . .	Washington, D. C.
MCCARTER, ROBERT H., . . . . .	Newark, N. J.
MCCARTER, THOMAS N., . . . . .	Newark, N. J.
MCCARTHY, HENRY J., . . . . .	Philadelphia, Pa.
MCCARTHY, J. J., . . . . .	Dubuque, Ia.
MCCLAINE, EMLIN, . . . . .	Iowa City, Ia.
MCCLELLAN, THOMAS N., . . . . .	Montgomery, Ala.
MCCCLINTOCK, ANDREW H., . . . . .	Wilkesbarre, Pa.
MCCLOSKEY, BERNARD, . . . . .	New Orleans, La.
MCCLUNG, WM. H., . . . . .	Pittsburg, Pa.
MCCLURE, HARROLD M., . . . . .	Lewisburg, Pa.
MCCOMAS, LOUIS E., . . . . .	Hagerstown, Md.
MCCONLOGUE, JAMES H., . . . . .	Mason City, Ia.
MCCOOK, JOHN J., . . . . .	New York, N. Y.
MCCORDIC, ALFRED E., . . . . .	Chicago, Ill.
MCCRARY, A. J., . . . . .	Keokuk, Ia.
MCCULLOUGH, JOHN G., . . . . .	No. Bennington, Vt.
MCDERMOTT, EDWARD J., . . . . .	Louisville, Ky.
MCDONALD, J. WADE, . . . . .	San Diego, Cal.
MCDONOUGH, JAMES B., . . . . .	Fort Smith, Ark.
MCELROY, JOHN H., . . . . .	Chicago, Ill.
MCEVOY, JOHN W., . . . . .	Lowell, Mass.
MCGARRY, THOMAS F., . . . . .	Grand Rapids, Mich.
MCGUINNESS, EDWIN D., . . . . .	Providence R. I.
MCHUGH, WILLIAM D., . . . . .	Omaha, Neb.
MCKENNEY, FREDERIC D., . . . . .	Washington, D. C.
MCKEIGHAN, JOHN E., . . . . .	St. Louis, Mo.
MCKINLEY, WILLIAM (Washington, D. C.), . . . . .	Canton, Ohio.
MCKINNEY, WILLIAM M., . . . . .	Northport, N. Y.
MCLEAN, DONALD, . . . . .	New York, N. Y.
MCLEOD, W. D., . . . . .	Kansas City, Mo.
MCCLOUD, J. W., . . . . .	Little Rock, Ark.
MCCMAHON, J. SPRIGG, . . . . .	Dayton, Ohio.
MCMILLAN, JAMES H., . . . . .	Detroit, Mich.
MCCNULTY, WILLIAM D. (New York, N. Y.), . . . . .	Saratoga Springs, N. Y.
MCCRAE, WILLIAM P., . . . . .	Petersburg, Va.

McSHERRY, JAMES, . . . . .	Frederick, Md.
McWHORTER, HAMILTON, . . . . .	Lexington, Ga.
NAGEL, CHARLES, . . . . .	St. Louis, Mo.
NEEDHAM, CHARLES W., . . . . .	Washington, D. C.
NEW, ALEXANDER, . . . . .	Kansas City, Mo.
NEWBERGER, LOUIS, . . . . .	Indianapolis, Ind.
NEWMAN, EMILE, . . . . .	Savannah, Ga.
NEWTON, GEORGE W., . . . . .	Fargo, N. D.
NICHOLS, GEORGE L., . . . . .	New York, N. Y.
NICHOLS, H. S. P., . . . . .	Philadelphia, Pa.
NICHOLSON, JOHN R., . . . . .	Dover, Del.
NICOLSON, JOHN, JR., . . . . .	New York, N. Y.
NIELDS, JOHN P., . . . . .	Wilmington, Del.
NOBLE, JOHN W., . . . . .	St. Louis, Mo.
NOEL, JAMES W., . . . . .	Indianapolis, Ind.
NORRIS, MARK, . . . . .	Grand Rapids, Mich.
NORRIS, MYRON A., . . . . .	Youngstown, Ohio.
NORTH, E. D., . . . . .	Lancaster, Pa.
NORTH, HUGH M., . . . . .	Columbia, Pa.
NOYES, GEORGE H., . . . . .	Milwaukee, Wis.
O'BRIEN, THOMAS J., . . . . .	Grand Rapids, Mich.
O'DONNELL, THOMAS J., . . . . .	Denver, Col.
OFFIELD, CHARLES K., . . . . .	Chicago, Ill.
OGDEN, LEWIS M., . . . . .	Milwaukee, Wis.
OGLESBEE, ROLLA B., . . . . .	Plymouth, Ind.
OLNEY, RICHARD, . . . . .	Boston, Mass.
OPDYKE, WILLIAM S., . . . . .	New York, N. Y.
ORDRONAUX, JOHN, . . . . .	New York, N. Y.
ORENDORFF, ALFRED, . . . . .	Springfield, Ill.
ORTON, PHILO A., . . . . .	Darlington, Wis.
OSBORN, C. W., . . . . .	Painesville, Ohio.
OSGOOD, HOWARD L., . . . . .	Rochester, N. Y.
OSTRANDER, RUSSELL C., . . . . .	Lansing, Mich.
OTIS, EPHRAIM A., . . . . .	Chicago, Ill.
OTTOFY, L. FRANK, . . . . .	St. Louis, Mo.
OWENS, GEORGE W., . . . . .	Savannah, Ga.
PADDOCK, GEORGE L., . . . . .	Chicago, Ill.
PAGE, HENRY, . . . . .	Princess Anne, Md.
PAGE, ROSEWELL, . . . . .	Richmond, Va.
PAGE, THOMAS NELSON, . . . . .	Washington, D. C.
PALMER, HENRY W., . . . . .	Wilkesbarre, Pa.
PALMER, TRUMAN F., . . . . .	Monticello, Ind.
PARKER, ALTON B., . . . . .	Kingston, N. Y.
PARKER, CORTLANDT, . . . . .	Newark, N. J.
PARKER, EDMUND M., . . . . .	Boston, Mass.

PARKER, ROBERT S., . . . . .	Bowling Green, Ohio.
PARKER, R. WAYNE, . . . . .	Newark, N. J.
PARKHURST, JOHN G., . . . . .	Coldwater, Mich.
PARKINSON, ROBERT H., . . . . .	Chicago, Ill.
PARMENTER, ROSWELL A., . . . . .	Troy, N. Y.
PARSONS, HIN·DILL, . . . . .	Schenectady, N. Y.
PARSONS, JAMES M., . . . . .	Rock Rapids, Ia.
PATTERSON, GEORGE S., . . . . .	Philadelphia, Pa.
PATTERSON, JOHN C., . . . . .	Marshall, Mich.
PATTERSON, JOHN H., . . . . .	Pontiac, Mich.
PATTERSON, LINDSAY, . . . . .	Winston, N. C.
PATTERSON, M. R., . . . . .	Columbus, Ohio.
PATTERSON, ROSWELL H., . . . . .	Scranton, Pa.
PATTERSON, T. ELLIOTT, . . . . .	Philadelphia, Pa.
PATTERSON, THOMAS, . . . . .	Pittsburg, Pa.
PATTESON, S. S. P., . . . . .	Richmond, Va.
PATTON, JOHN, . . . . .	Grand Rapids, Mich.
PAUL, A. C., . . . . .	Minneapolis, Minn.
PAYNE, JAMES G., . . . . .	Washington, D. C.
PAYSON, EDWARD P., . . . . .	Boston, Mass.
PEABODY, CHARLES A., . . . . .	New York, N. Y.
PEABODY, FRANCIS D., . . . . .	Columbus, Ga.
PECK, GEORGE R., . . . . .	Chicago, Ill.
PECK, HIRAM D., . . . . .	Cincinnati, Ohio.
PENCE, ABRAM M., . . . . .	Chicago, Ill.
PENDLETON, EDWARD W., . . . . .	Detroit, Mich.
PENFIELD, W. L. (State Dep't, Washington, D.C.),	Auburn, Ind.
PENNYPACKER, CHARLES H., . . . . .	West Chester, Pa.
PENNYPACKER, SAMUEL W., . . . . .	Philadelphia, Pa.
PEPPER, GEORGE WHARTON, . . . . .	Philadelphia, Pa.
PERELES, JAMES M., . . . . .	Milwaukee, Wis.
PERELES, THOMAS JEFFERSON, . . . . .	Milwaukee, Wis.
PERHAM, FREDERIC E., . . . . .	New York, N. Y.
PERKINS, SAMUEL C., . . . . .	Philadelphia, Pa.
PERKINS, WILLIAM H., . . . . .	Baltimore, Md.
PERRY, WILLIAM C., . . . . .	Kansas City, Mo.
PETERS, JOHN A., . . . . .	Bangor, Me.
PETTIT, HORACE, . . . . .	Philadelphia, Pa.
PETTY, ROBERT D., . . . . .	New York, N. Y.
PHELPS, CHARLES, . . . . .	Rockville, Conn.
PHELPS, CHARLES E., . . . . .	Baltimore, Md.
PHELPS, EDWARD J., . . . . .	Burlington, Vt.
PICKENS, SAMUEL O., . . . . .	Indianapolis, Ind.
PICKENS, WILLIAM A., . . . . .	Indianapolis, Ind.
PICKRELL, JOHN, . . . . .	Richmond, Va.



PIERCE, EDWARD P., . . . . .	Fitchburg, Mass.
PIERCE, WINSLOW S., . . . . .	New York, N. Y.
PIKE, LOUIS H., . . . . .	Toledo, Ohio.
PILCHER, JAMES S., . . . . .	Nashville, Tenn.
PINGREY, D. H., . . . . .	Bloomington, Ill.
PINTARD, WILLIAM, . . . . .	Red Bank, N. J.
PIRTLE, JAMES S., . . . . .	Louisville, Ky.
POE, JOHN PRENTISS, . . . . .	Baltimore, Md.
POND, ASHLEY, . . . . .	Detroit, Mich.
PORTER, ANTHONY B., . . . . .	New York, N. Y.
POTTER, CHARLES N., . . . . .	Cheyenne, Wyo.
POTTER, DEXTER B., . . . . .	Providence, R. I.
POTTER, FREDERICK, . . . . .	New York, N. Y.
POWERS, FREDERICK A., . . . . .	Houlton, Me.
PRATT, CHARLES, . . . . .	Toledo, Ohio.
PRATT, WALLACE, . . . . .	Kansas City, Mo.
PRENTIS, ROBERT R., . . . . .	Suffolk, Va.
PRICHARD, FRANK P., . . . . .	Philadelphia, Pa.
PRIME, RALPH E., . . . . .	Yonkers, N. Y.
PROCTOR, THOMAS W., . . . . .	Boston, Mass.
PRUSSING, EUGENE E., . . . . .	Chicago, Ill.
PRUDEN, WILLIAM D., . . . . .	Edenton, N. C.
PUTNAM, HARRINGTON W., . . . . .	New York, N. Y.
PUTNAM, HENRY W., . . . . .	Boston, Mass.
PUTNAM, WILLIAM L., . . . . .	Boston, Mass.
QUACKENBUSH, JAMES L., . . . . .	Buffalo, N. Y.
QUAIL, FRANK A., . . . . .	Cleveland, Ohio.
QUARLES, CHARLES, . . . . .	Milwaukee, Wis.
QUABLES, JOSEPH V., . . . . .	Milwaukee, Wis.
QUARTON, WILLIAM B., . . . . .	Algona, Ia.
RADFORD, GEORGE W., . . . . .	Detroit, Mich.
RALSTON, JACKSON H., . . . . .	Washington, D. C.
RAMAGE, B. J., . . . . .	Sewanee, Tenn.
RANDALL, E. O., . . . . .	Columbus, Ohio.
RANNEY, FLETCHER, . . . . .	Boston, Mass.
RANNEY, HENRY C., . . . . .	Cleveland, Ohio.
RAWLE, FRANCIS, . . . . .	Philadelphia, Pa.
RAYMOND, JAMES H., . . . . .	Chicago, Ill.
RAYNOLDS, EDWARD V., . . . . .	New Haven, Conn.
REDDING, JOSEPH D., . . . . .	New York, N. Y.
REDDING, WILLIAM A., . . . . .	New York, N. Y.
REED, FRANK F., . . . . .	Chicago, Ill.
REED, MILTON, . . . . .	Fall River Mass.
REEVES, ALFRED G., . . . . .	New York, N. Y.
REINHARD, GEORGE L., . . . . .	Bloomington, Ind.

RHODES, FRANK V., . . . . .	Baltimore, Md.
RICH, BURDETTE A., . . . . .	Rochester, N. Y.
RICHARDS, HARRY S., . . . . .	Iowa City, Ia.
RICHARDSON, GEORGE F., . . . . .	Lowell, Mass.
RICHARDSON, W. K., . . . . .	Boston, Mass.
RICHBERG, JOHN C., . . . . .	Chicago, Ill.
RICHMOND, BENJAMIN, A., . . . . .	Cumberland, Md.
RIKER, ADRIAN, . . . . .	Newark, N. J.
RINAKER, JOHN I., . . . . .	Carlinville, Ill.
RINEHART, C. D., . . . . .	Jacksonville, Fla.
RINER, JOHN A., . . . . .	Cheyenne, Wyo.
RITCHIE, JOHN, . . . . .	Durant, Ind.
RITSHER, EDWARD C., . . . . .	Chicago, Ill.
ROBB, BAMFORD A., . . . . .	Boise, Idaho.
ROBBINS, EDWARD D., . . . . .	Hartford, Conn.
ROBBINS, HENRY S., . . . . .	Chicago, Ill.
ROBERTS, GEORGE L., . . . . .	Boston, Mass.
ROBERTSON, C. D., . . . . .	Cincinnati, Ohio.
ROBINSON, RALPH, . . . . .	Baltimore, Md.
ROBINSON, THOMAS H., . . . . .	Bel Air, Md.
ROBINSON, V. GILPIN, . . . . .	Media, Pa.
ROBSON, FRANK E., . . . . .	Detroit, Mich.
ROELKER, WILLIAM G., . . . . .	Providence, R. I.
ROGERS, EDWARD H., . . . . .	New Haven, Conn.
ROGERS, HENRY T., . . . . .	Denver, Col.
ROGERS, HENRY WADE, . . . . .	Evanston, Ill.
ROGERS, PLATT, . . . . .	Denver, Col.
ROGERS, ROBERT LYON, . . . . .	Baltimore, Md.
ROGERS, SHERMAN S., . . . . .	Buffalo, N. Y.
ROGERS, WILLIAM P., . . . . .	Bloomington, Ind.
ROOT, ELIHU, . . . . .	New York, N. Y.
ROQUEMORE, JOHN D., . . . . .	Montgomery, Ala.
ROSE, GEORGE B., . . . . .	Little Rock, Ark.
ROSE, JAMES E., . . . . .	Auburn, Ind.
ROSE, U. M., . . . . .	Little Rock, Ark.
ROSENTHAL, JULIUS, . . . . .	Chicago, Ill.
ROST, EMILE, . . . . .	New Orleans, La.
RULE, VIRGIL, . . . . .	St. Louis, Mo.
RUNNELIS, JOHN S., . . . . .	Chicago, Ill.
RUSSELL, ALFRED, . . . . .	Detroit, Mich.
RUSSELL, CHARLES THEODORE, . . . . .	Cambridge, Mass.
RUSSELL, EDWARD L., . . . . .	Mobile, Ala.
RUSSELL, HENRY, . . . . .	Detroit, Mich.
RUSSELL, ISAAC F., . . . . .	New York, N. Y.
RUSSELL, TALCOTT H., . . . . .	New Haven, Conn.

SALTZGABER, GAYLARD M.,	Van Wert, Ohio
SAMS, CONWAY W.,	Baltimore, Md.
SANBORN, JOHN B.,	St. Paul, Minn.
SANDERS, GEORGE A.,	Springfield, Ill.
SANDERS, JAMES U.,	Helena, Mont.
SANDERS, W. B.,	Cleveland, Ohio.
SANDERS, WILBUR F.,	Helena, Mont.
SANDERSON, THOMAS W.,	Youngstown, Ohio.
SANDS, F. P. B.,	Washington, D. C.
SANFORD, EDWARD T.,	Knoxville, Tenn.
SANFORD, ELISHA M.,	Prescott, Ariz.
SACLSBURY, WILLARD,	Wilmington, Del.
SAWYER, ALFRED P.,	Lowell, Mass.
SAYLER, HENRY B.,	Huntington, Ind.
SAYLER, JOHN RYNER,	Cincinnati, Ohio.
SAYLER, SAMUEL M.,	Huntington, Ind.
SCAIFE, LAURISTON L.,	Boston, Mass.
SCALLON, WILLIAM,	Butte, Mont.
SCHNABEL, CHARLES J.,	Portland, Ore.
SCHOFIELD, WILLIAM,	Boston, Mass.
SCHOULER, JAMES,	Boston, Mass.
SCOTT, C. SUYDAM,	Lexington, Ky.
SCOTT, FRANK H.,	Chicago, Ill.
SCOTT, HOWARD B.,	Danbury, Conn.
SEAMAN, WILLIAM H.,	Sheboygan, Wis.
SEARLES, CHARLES E.,	Putnam, Conn.
SEATON, EMMETT,	Richmond, Va.
SEEVERS, GEORGE W.,	Oskaloosa, Ia.
SEIBERT, WILLIAM N.,	New Bloomfield, Pa.
SELDEN, JOHN,	Washington, D. C.
SELLERS, EMORY B.,	Monticello, Ind.
SELLS, CATO,	Vinton, Ia.
SENEY, HENRY W.,	Toledo, Ohio.
SEYMOUR, GEORGE D.,	New Haven, Conn.
SEYMOUR, HENRY A.,	Washington, D. C.
SEYMOUR, HENRY H.,	Buffalo, N. Y.
SEYMOUR, JOHN S.,	New York, N. Y.
SHACK, FERDINAND,	New York, N. Y.
SHAFROTH, JOHN F.,	Denver, Col.
SHAPLEY, RUFUS E.,	Philadelphia, Pa.
SHARP, GEORGE M.,	Baltimore, Md.
SHARTEL, JOHN W.,	Guthrie, O. T.
SHAW, R. K.,	Marietta, Ohio.
SHEEAN, JAMES B.,	Omaha, Neb.
SHEPARD, CHARLES E.,	Seattle, Wash.

SHEPARD, HARVEY N., . . . . .	Boston, Mass.
SHEPARD, RICHARD B., . . . . .	Salt Lake City, Utah.
SHEPARD, SETH, . . . . .	Washington, D. C.
SHERLEY, SWAGAR, . . . . .	Louisville, Ky.
SHERMAN, E. B., . . . . .	Chicago, Ill.
SHERWIN, JOHN C., . . . . .	Mason City, Ia.
SHERWOOD, ADIEL, . . . . .	St. Louis, Mo.
SHIELDS, J. M., . . . . .	Pittsburg, Pa.
SHIPMAN, GEORGE M., . . . . .	Belvidere, N. J.
SHIRAS, GEORGE, JR., . . . . .	Pittsburg, Pa.
SHIRAS, OLIVER P., . . . . .	Dubuque, Ia.
SHUMWAY, MILTON A., . . . . .	Danielson, Conn.
SIEBECKER, ROBERT G., . . . . .	Madison, Wis.
SIMPSON, ALEXANDER, JR., . . . . .	Philadelphia, Pa.
SKELTON, WILLIAM B., . . . . .	Lewiston, Me.
SLABAUGH, W. W., . . . . .	Omaha, Neb.
SLAGLE, JACOB F., . . . . .	Pittsburg, Pa.
SLOAN, DAVID W., . . . . .	Cumberland, Md.
SMEAD, A. D. B., . . . . .	Carlisle, Pa.
SMEDES, JOHN MARSHALL, . . . . .	Cincinnati, Ohio.
SMITH, ALEXANDER L., . . . . .	Toledo, Ohio.
SMITH, ALONZO GREENE, . . . . .	Indianapolis, Ind.
SMITH, BEVERLY W., . . . . .	Baltimore, Md.
SMITH, BURTON, . . . . .	Atlanta, Ga.
SMITH, CHARLES B., . . . . .	Topeka, Kan.
SMITH, CHARLES W., . . . . .	Indianapolis, Ind.
SMITH, EDWIN BURRITT, . . . . .	Chicago, Ill.
SMITH, EDWIN HARVIE, . . . . .	Denver, Col.
SMITH, FRANK J., . . . . .	Chicago, Ill.
SMITH, FREDERICK A., . . . . .	Chicago, Ill.
SMITH, HENRY HYDE, . . . . .	Boston, Mass.
SMITH, H. LINDALE, . . . . .	Cleveland, Ohio.
SMITH, HOWARD B., . . . . .	Omaha, Neb.
SMITH, JEREMIAH, . . . . .	Cambridge, Mass.
SMITH, JOHN SABINE, . . . . .	New York, N. Y.
SMITH, LUTHER R., . . . . .	Washington, D. C.
SMITH, NELSON, . . . . .	New York, N. Y.
SMITH, ROBERT WAVERLY, . . . . .	Galveston, Texas.
SMITH, RUFUS B., . . . . .	Cincinnati, Ohio.
SMITH, SAM. FERRY, . . . . .	San Diego, Cal.
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AVERY, JOHN C.,	Pensacola.
BLOUNT, WILLIAM A.,	Pensacola.
FLETCHER, D. U.,	Jacksonville.
LIDDON, BENJ. S.,	Pensacola.
MASSEY, LOUIS C.,	Orlando.
RINEHART, C. D.,	Jacksonville.
WILLIAMS, R. W.,	Tallahassee.

## GEORGIA.

ABBOTT, B. F.,	Atlanta.
ADAMS, SAMUEL B.,	Savannah.
AKIN, JOHN W.,	Cartersville.
BARROW, POPE,	Savannah.
BARTLETT, CHARLES L.,	Macon.
BRANDON, MORRIS,	Atlanta.
CANN, J. FERRIS,	Savannah.
CHARLTON, WALTER G.,	Savannah.
COLVILLE, FULTON,	Atlanta.
CROVATT, A. J.,	Brunswick.
CUMMING, JOSEPH B.,	Augusta.
CUNNINGHAM, HENRY C.,	Savannah.
CUNNINGHAM, T. M., JR.,	Savannah.
DELACY, JOHN F.,	Eastman.
DUBIGNON, FLEMING G.,	Savannah.
ELLIS, W. D.,	Atlanta.
ERWIN, R. G.,	Savannah.

## GEORGIA.—Continued.

FALLIGANT, ROBERT, . . . . .	Savannah.
GARRARD, LOUIS F., . . . . .	Columbus.
GARRARD, WILLIAM, . . . . .	Savannah.
HILL, WALTER B., . . . . .	Macon.
KAY, WILLIAM E., . . . . .	Brunswick.
LAMAR, JOSEPH R., . . . . .	Augusta.
LAWTON, ALEXANDER R., . . . . .	Savannah.
LEAKEN, WILLIAM R., . . . . .	Savannah.
MACKALL, WILLIAM W., . . . . .	Savannah.
MELDRIM, P. W., . . . . .	Savannah.
MILLER, FRANK H., . . . . .	Augusta.
MILLER, FRANK H., JR., . . . . .	Augusta.
MILLER, WILLIAM K., . . . . .	Augusta.
MICALPIN, HENRY, . . . . .	Savannah.
MCWHORTER, HAMILTON, . . . . .	Lexington.
NEWMAN, EMILE, . . . . .	Savannah.
OWENS, GEORGE W., . . . . .	Savannah.
PEABODY, FRANCIS D., . . . . .	Columbus.
SMITH, BURTON, . . . . .	Atlanta.
TOMPKINS, HENRY B., . . . . .	Atlanta.
WIMBISH, W. A., . . . . .	Columbus.

## IDAHO.

GREGORY, HENRY STUART, . . . . .	Wallace.
MAYHEW, ALEXANDER E., . . . . .	Wallace.
ROBB, BAMFORD A., . . . . .	Boise.
STEWART, GEORGE H., . . . . .	Boise.
WOODS, WILLIAM W., . . . . .	Wallace.

## ILLINOIS.

AYER, B. F., . . . . .	Chicago.
BANCROFT, EDGAR A., . . . . .	Chicago.
BANNING, EPHRAIM, . . . . .	Chicago.
BANNING, THOMAS A., . . . . .	Chicago.
BARRETT, ELMER E., . . . . .	Chicago.
BARTON, GEORGE P., . . . . .	Chicago.
BEACH, MYRON H., . . . . .	Chicago.
BEALE, WILLIAM G., . . . . .	Chicago.
BLAIR, FRANK PRESTON, . . . . .	Chicago.
BONNEY, C. C., . . . . .	Chicago.
BRADWELL, JAMES B., . . . . .	Chicago.
BROWN, TAYLOR E., . . . . .	Chicago.

## ILLINOIS.—Continued.

BURNHAM, TELFORD, . . . . .	Chicago.
BURRY, WILLIAM, . . . . .	Chicago.
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CHANCELLOR, JUSTUS, . . . . .	Chicago.
COLBY, FRANCIS T., . . . . .	Chicago.
CRAWFORD, ANDREW, . . . . .	Chicago.
DANIELS, FRANCIS B., . . . . .	Chicago.
DAVIS, HERBERT J., . . . . .	Chicago.
DENEEN, CHARLES S., . . . . .	Chicago.
DENT, THOMAS, . . . . .	Chicago.
DICKINSON, J. M., . . . . .	Chicago.
DYRENFORTH, PHILIP C., . . . . .	Chicago.
DYRENFORTH, WILLIAM H., . . . . .	Chicago.
EASTMAN, SIDNEY C., . . . . .	Chicago.
ESTABROOK, HENRY D., . . . . .	Chicago.
FENTRESS, JAMES, . . . . .	Chicago.
FIELD, HEMAN H., . . . . .	Chicago.
FLOWER, JAMES M., . . . . .	Chicago.
FURNESS, WILLIAM ELIOT, . . . . .	Chicago.
GARTSIDE, JOHN M., . . . . .	Chicago.
GIBBONS, JOHN, . . . . .	Chicago.
GREGORY, STEPHEN S., . . . . .	Chicago.
GROSSCUP, PETER S., . . . . .	Chicago.
HAMLIN, JOHN H., . . . . .	Chicago.
HARDING, CHARLES F., . . . . .	Chicago.
HARLAND, WALTER M., . . . . .	Chicago.
HARRIMAN, EDWARD AVERY, . . . . .	Chicago.
HEBARD, FREDERIC S., . . . . .	Chicago.
HERRICK, JOHN J., . . . . .	Chicago.
HILL, LYSANDER, . . . . .	Chicago.
HOLDOM, JESSE, . . . . .	Chicago.
HURD, HARVEY B., . . . . .	Chicago.
ISHAM, EDWARD S., . . . . .	Chicago.
ISHAM, PIERREPONT, . . . . .	Chicago.
JEWETT, JOHN N., . . . . .	Chicago.
JUNKIN, FRANCIS T. A., . . . . .	Chicago.
KENNA, EDWARD D., . . . . .	Chicago.
KRAUTHOFF, L. C., . . . . .	Chicago.
KRETZINGER, GEORGE W., . . . . .	Chicago.
LACKNER, FRANCIS, . . . . .	Chicago.
LEE, BLEWETT, . . . . .	Chicago.
LEVINSON, S. O., . . . . .	Chicago.
LOESCH, FRANK J., . . . . .	Chicago.
LOWDEN, FRANK O., . . . . .	Chicago.



## ILLINOIS.—Continued.

MACK, JULIAN W., . . . . .	Chicago.
MANNING, WILLIAM J., . . . . .	Chicago.
MARTIN, HORACE H., . . . . .	Chicago.
MARTYN, CHAUNCEY W., . . . . .	Chicago.
MATHER, ROBERT, . . . . .	Chicago.
MERRICK, GEORGE PECK, . . . . .	Chicago.
MILLER, JOHN S., . . . . .	Chicago.
MOSES, ADOLPH, . . . . .	Chicago.
MUSGRAVE, HARRISON, . . . . .	Chicago.
McCORDIC, ALFRED E., . . . . .	Chicago.
McELROY, JOHN H., . . . . .	Chicago.
OFFIELD, CHARLES K., . . . . .	Chicago.
ORENDORFF, ALFRED, . . . . .	Springfield.
OTIS, EPHRAIM A., . . . . .	Chicago.
PADDOCK, GEORGE L., . . . . .	Chicago.
PARKINSON, ROBERT H., . . . . .	Chicago.
PECK, GEORGE R., . . . . .	Chicago.
PENCE, ABRAM M., . . . . .	Chicago.
PINGREY, D. H., . . . . .	Bloomington.
PRUSSING, EUGENE E., . . . . .	Chicago.
RAYMOND, JAMES H., . . . . .	Chicago.
REED, FRANK F., . . . . .	Chicago.
RICHBERG, JOHN C., . . . . .	Chicago.
RINAKER, JOHN I., . . . . .	Carlinville.
RITSHER, EDWARD C., . . . . .	Chicago.
ROBBINS, HENRY S., . . . . .	Chicago.
ROGERS, HENRY WADE, . . . . .	Evanston.
ROSENTHAL, JULIUS, . . . . .	Chicago.
RUNNELLS, JOHN S., . . . . .	Chicago.
SANDERS, GEORGE A., . . . . .	Springfield.
SCOTT, FRANK H., . . . . .	Chicago.
SHERMAN, E. B., . . . . .	Chicago.
SMITH, EDWIN BURRITT, . . . . .	Chicago.
SMITH, FRANK J., . . . . .	Chicago.
SMITH, FREDERICK A., . . . . .	Chicago.
STARR, MERRITT, . . . . .	Chicago.
STILLMAN, HERMAN W., . . . . .	Chicago.
TENNEY, HORACE KENT, . . . . .	Chicago.
THOMAN, LEROY D., . . . . .	Chicago.
THORNTON, CHARLES S., . . . . .	Chicago.
TOWLE, HENRY S., . . . . .	Chicago.
ULLMAN, FREDERIC, . . . . .	Chicago.
WALL, GEORGE W., . . . . .	Du Quoin.
WARVILLE, GEORGE W., . . . . .	Chicago.

## ILLINOIS.—Continued.

WASHBURNE, WILLIAM D., . . . . .	Chicago.
WEGG, DAVID S., . . . . .	Chicago.
WEST, ROY O., . . . . .	Chicago.
WHEELER, ARTHUR DANA, . . . . .	Chicago.
WIGMORE, JOHN H., . . . . .	Chicago.
WILLARD, GEORGE, . . . . .	Chicago.
WILLARD, NORMAN P., . . . . .	Chicago.
WILLIAMS, E. P., . . . . .	Galesburg.
ZEISLER, SIGMUND, . . . . .	Chicago.

## INDIAN TERRITORY.

RITCHIE, JOHN, . . . . .	Durant.
YANCEY, DAVID W., . . . . .	Muskogee.

## INDIANA.

BEAUCHAMP, ROBERT B., . . . . .	Tipton.
BLACKLIDGE, JAMES C., . . . . .	Kokomo.
BRADFORD, CHESTER, . . . . .	Indianapolis.
BRADLEY, JOHN H., . . . . .	La Porte.
BRADY, ARTHUR W., . . . . .	Muncie.
BREEN, WILLIAM P., . . . . .	Ft. Wayne.
BROWNLEE, HIRAM, . . . . .	Marion.
BUTLER, NOBLE C., . . . . .	Indianapolis.
CARSON, JOHN F., . . . . .	Indianapolis.
CHAMBERS, SMILEY N., . . . . .	Indianapolis.
CLARKE, GEORGE E., . . . . .	South Bend.
DANIELS, EDWARD, . . . . .	Indianapolis.
DAVIS, SYDNEY B., . . . . .	Terre Haute.
DYE, JOHN T., . . . . .	Indianapolis.
EICHORN, WILLIAM H., . . . . .	Bluffton.
ELLIOTT, WILLIAM F., . . . . .	Indianapolis.
EVANS, ROWLAND, . . . . .	Indianapolis.
FAIRBANKS, CHAS. W., . . . . .	Indianapolis.
FESLER, JAMES WILLIAM, . . . . .	Indianapolis.
FISHBACK, W. P., . . . . .	Indianapolis.
FREY, PHILIP W., . . . . .	Evansville.
GOULD, JOHN H., . . . . .	Delphi.
HARRISON, BENJAMIN, . . . . .	Indianapolis.
HAWKINS, ROSCOE O., . . . . .	Indianapolis.
HEROD, WILLIAM PIRTLE, . . . . .	Indianapolis.
INGLER, FRANCIS M., . . . . .	Indianapolis.
JAMESON, OVID B., . . . . .	Indianapolis.

## INDIANA.—Continued.

JOSS, FREDERICK H., . . . . .	Indianapolis.
KERN, JOHN W., . . . . .	Indianapolis.
KETCHAM, WILLIAM A., . . . . .	Indianapolis.
KORBLY, CHARLES A., . . . . .	Indianapolis.
LESH, U. S., . . . . .	Huntington.
MARTINDALE, CHARLES, . . . . .	Indianapolis.
MILLER, CHARLES W., . . . . .	Goshen.
MONTGOMERY, OSCAR H., . . . . .	Seymour.
MOORES, CHARLES W., . . . . .	Indianapolis.
MOORES, MERRILL, . . . . .	Indianapolis.
MORRIS, JOHN JR., . . . . .	Ft. Wayne.
MORRIS, NATHAN, . . . . .	Indianapolis.
MYERS, QUINCY A., . . . . .	Logansport.
NEWBERGER, LOUIS, . . . . .	Indianapolis.
NOEL, JAMES W., . . . . .	Indianapolis.
OGLESBEE, ROLLA B., . . . . .	Plymouth.
PALMER, TRUMAN F., . . . . .	Monticello.
PENFIELD, W. L. (State Dep't, Washington, D.C.),	Auburn.
PICKENS, SAMUEL O., . . . . .	Indianapolis.
PICKENS, WILLIAM A., . . . . .	Indianapolis.
REINHARD, GEORGE L., . . . . .	Bloomington.
ROGERS, WILLIAM P., . . . . .	Bloomington.
ROSE, JAMES E., . . . . .	Auburn.
SAYLER, HENRY B., . . . . .	Huntington.
SAYLER, SAMUEL M., . . . . .	Huntington.
SELLERS, EMORY B., . . . . .	Monticello.
SMITH, ALONZO GREENE, . . . . .	Indianapolis.
SMITH, CHARLES W., . . . . .	Indianapolis.
SNOW, ALPHEUS H., . . . . .	Indianapolis.
SPENCER, CHARLES C., . . . . .	Monticello.
STEVENSON, ELMER E., . . . . .	Indianapolis.
STUART, WILLIAM V., . . . . .	Lafayette.
SWAN, ELBERT M., . . . . .	Rockport.
TAYLOR, R. S., . . . . .	Fort Wayne.
TAYLOR, WILLIAM L., . . . . .	Indianapolis.
WHITCOMB, LARZ. A., . . . . .	Indianapolis.
WILSON, JOHN R., . . . . .	Indianapolis.
WOODS, WILLIAM A., . . . . .	Indianapolis.

## IOWA.

AYRES, O. B., . . . . .	Des Moines.
BURK, W. D., . . . . .	Muscatine.
CANADAY, WALTER, . . . . .	Boone.

## IOWA.—Continued.

CLIGGETT, JOHN, . . . . .	Mason City.
CRAIG, JOHN E., . . . . .	Keokuk.
CROSBY, JAMES O., . . . . .	Garnavillo.
CUMMINS, A. B., . . . . .	Des Moines.
DAVIS, JAMES C., . . . . .	Keokuk.
DEEMER, H. E., . . . . .	Red Oak.
DEERY, JOHN, . . . . .	Dubuque.
DILLE, JOHN I., . . . . .	Des Moines.
DUDLEY, C. A., . . . . .	Des Moines.
DUNCOMBE, JOHN F., . . . . .	Fort Dodge.
GUERNSEY, NATHANIEL T., . . . . .	Des Moines.
HENDERSON, J. H., . . . . .	Indianola.
KINNE, L. G., . . . . .	Des Moines.
KNIGHT, W. J., . . . . .	Dubuque.
MARKLEY, J. E. E., . . . . .	Mason City.
MOFFIT, JOHN T., . . . . .	Tipton.
MCCARTHY, J. J., . . . . .	Dubuque.
MCCLAIN, EMLIN, . . . . .	Iowa City.
MCCONLOGUE, JAMES H., . . . . .	Mason City.
MCCRARY, A. J., . . . . .	Keokuk.
PARSONS, JAMES M., . . . . .	Rock Rapids.
QUARTON, WILLIAM B., . . . . .	Algona.
RICHARDS, HARRY S., . . . . .	Iowa City.
SEEVERS, GEORGE W., . . . . .	Oskaloosa.
SELLS, CATO, . . . . .	Vinton.
SHERWIN, JOHN C., . . . . .	Mason City.
SHIRAS, OLIVER P., . . . . .	Dubuque.
STILLMAN, WALTER S., . . . . .	Council Bluffs.
SWETTING, ERNEST V., . . . . .	Algona.
WADE, M. J., . . . . .	Iowa City.

## KANSAS.

MILLIKEN, JOHN D., . . . . .	McPherson.
SMITH, CHARLES B., . . . . .	Topeka.
WAGGENER, BALIE P., . . . . .	Atchison.
WALL, THOMAS B., . . . . .	Wichita.

## KENTUCKY.

ALLEN, JOHN R., . . . . .	Lexington.
BARR, JOHN W., . . . . .	Louisville.
BARR, JOHN W., JR., . . . . .	Louisville.
BASKIN, JOHN B., . . . . .	Louisville.
BRUCE, HELM, . . . . .	Louisville.

## KENTUCKY.—Continued.

BULLITT, THOMAS W.,	Louisville.
DAVIE, GEORGE M.,	Louisville.
DEMBITZ, LEWIS N.,	Louisville.
GILBERT, GEORGE G.,	Shelbyville.
GOEBEL, WILLIAM,	Covington.
GRUBBS, CHARLES, S.,	Louisville.
HARRIS, W. O.,	Louisville.
HELM, JAMES P.,	Louisville.
HENDRICK, W. J.,	Frankfort.
LINDSAY, WILLIAM,	Frankfort.
MACPHERSON, ERNEST,	Louisville.
MORTON, J. R.,	Lexington.
MCDERMOTT, EDWARD J.,	Louisville.
PIRTLE, JAMES S.,	Louisville.
SCOTT, C. SUYDAM,	Lexington.
SHERLEY, SWAGAR,	Louisville.
STONE, HENRY L.,	Louisville.
SUDDUTH, W. A.,	Louisville.
THUM, WILLIAM WARWICK,	Louisville.
TRABUE, E. F.,	Louisville.
WATTS, WILLIAM W.,	Louisville.
WEBB, GEORGE C.,	Lexington.
WILSON, AUGUSTUS E.,	Louisville.

## LOUISIANA.

ALEXANDER, TALIAFERRO,	Shreveport.
BENEDICT, W. S.,	New Orleans.
BREAUX, G. A.,	New Orleans.
BRICE, ALBERT G.,	New Orleans.
DART, HENRY P.,	New Orleans.
DENÉGRE, GEORGE,	New Orleans.
DENÉGRE, WALTER D.,	New Orleans.
FARRAR, EDGAR H.,	New Orleans.
FLORANCE, ERNEST T.,	New Orleans.
FORMAN, BENJAMIN RICE,	New Orleans.
HALL, HARRY H.,	New Orleans.
HART, W. O.,	New Orleans.
HOWE, WILLIAM WIRT,	New Orleans.
HUNT, CARLETON,	New Orleans.
KERNAN, THOMAS J.,	Baton Rouge.
KRUTTSCHNITT, ERNEST B.,	New Orleans.
LEGÈNDRE, JAMES,	New Orleans.
MARR, ROBERT H., JR.,	New Orleans.

## LOUISIANA.—Continued.

MERRICK, EDWIN T., . . . . .	New Orleans.
MCCALEB, E. HOWARD, . . . . .	New Orleans.
MCCLOSKEY, BERNARD, . . . . .	New Orleans.
ROST, EMILE, . . . . .	New Orleans.

## MAINE.

APPLETON, FREDERICK H., . . . . .	Bangor.
BELCHER, S. CLIFFORD, . . . . .	Farmington.
BIRD, GEORGE E., . . . . .	Portland.
COOK, CHARLES SUMNER, . . . . .	Portland.
EMERY, LUCILLIUS A., . . . . .	Ellsworth.
HALE, CLARENCE, . . . . .	Portland.
HAMLIN, CHARLES, . . . . .	Bangor.
HAMLIN, HANNIBAL E., . . . . .	Ellsworth.
HASKELL, THOMAS H., . . . . .	Portland.
HIGGINS, FRANK M., . . . . .	Limerick.
LIBBY, CHARLES F., . . . . .	Portland.
LITTLEFIELD, CHARLES E., . . . . .	Rockland.
LOCKE, JOSEPH A., . . . . .	Portland.
PETERS, JOHN A., . . . . .	Bangor.
POWERS, FREDERICK A., . . . . .	Houlton.
SKELTON, WILLIAM B., . . . . .	Lewiston.
SNOW, DAVID W., . . . . .	Portland.
STETSON, CHARLES P., . . . . .	Bangor.
STROUT, SEWALL C., . . . . .	Portland.
SYMONDS, JOSEPH W., . . . . .	Portland.
WILSON, F. A., . . . . .	Bangor.
WOODARD, CHARLES F., . . . . .	Bangor.
WOODMAN, EDWARD, . . . . .	Portland.

## MARYLAND.

ADKINS, WILLIAM H., . . . . .	Easton.
ALEXANDER, JULIAN J., . . . . .	Baltimore.
BARROLL, HOPE H., . . . . .	Chestertown.
BERNARD, RICHARD, . . . . .	Baltimore.
BONAPARTE, CHARLES J., . . . . .	Baltimore.
BRANTLY, WILLIAM T., . . . . .	Baltimore.
BROWN, STEWART, . . . . .	Baltimore.
BUCKLER, WILLIAM H., . . . . .	Baltimore.
CAREY, FRANCIS K., . . . . .	Baltimore.
COWEN, JOHN K., . . . . .	Baltimore.
CROSS, E. J. D., . . . . .	Baltimore.
DAWKINS, WALTER I., . . . . .	Baltimore.

## MARYLAND.—Continued.

DAWSON, WILLIAM H., . . . . .	Baltimore.
DINNEEN, JOHN H., . . . . .	Baltimore.
FISHER, WILLIAM A., . . . . .	Baltimore.
GANS, EDGAR H., . . . . .	Baltimore.
GREGG, MAURICE, . . . . .	Baltimore.
HALL, THOMAS W., . . . . .	Baltimore.
HARLAN, HENRY D., . . . . .	Baltimore.
HARLEY, CHARLES F., . . . . .	Baltimore.
HAWKINS, GILBERT S., . . . . .	Bel Air.
HAYES, THOMAS G., . . . . .	Baltimore.
HENDERSON, ROBERT R., . . . . .	Cumberland.
HINKLEY, JOHN, . . . . .	Baltimore.
HISKY, THOMAS FOLEY, . . . . .	Baltimore.
HOULTON, SAMUEL C., . . . . .	Baltimore.
HUGHES, THOMAS, . . . . .	Baltimore.
KNOTT, A. LEO, . . . . .	Baltimore.
LANE, J. CLARENCE, . . . . .	Hagerstown.
LEAKIN, J. WILSON, . . . . .	Baltimore.
LEGG, J. H. C., . . . . .	Centreville.
LOWNDES, LLOYD, . . . . .	Cumberland.
MACKALL, THOMAS B., . . . . .	Baltimore.
MARBURY, WILLIAM L., . . . . .	Baltimore.
MASON, JOHN T. (JOHN T. MASON, R.), . . . . .	Baltimore.
MITCHELL, JOHN H., . . . . .	La Plata.
MORRIS, THOMAS J., . . . . .	Baltimore.
MULLIN, MICHAEL A., . . . . .	Baltimore.
MCCOMAS, LOUIS E., . . . . .	Hagerstown.
MCShERRY, JAMES, . . . . .	Frederick.
PAGE, HENRY, . . . . .	Princess Anne.
PERKINS, WILLIAM H., . . . . .	Baltimore.
PHELPS, CHARLES E., . . . . .	Baltimore.
POE, JOHN PRENTISS, . . . . .	Baltimore.
RHODES, FRANK V., . . . . .	Baltimore.
RICHMOND, BENJAMIN, A., . . . . .	Cumberland.
ROBINSON, RALPH, . . . . .	Baltimore.
ROBINSON, THOMAS H., . . . . .	Bel Air.
ROGERS, ROBERT LYON, . . . . .	Baltimore.
SAMS, CONWAY W., . . . . .	Baltimore.
SHARP, GEORGE M., . . . . .	Baltimore.
SLOAN, DAVID W., . . . . .	Cumberland.
SMITH, BEVERLY W., . . . . .	Baltimore.
STEUART, ARTHUR, . . . . .	Baltimore.
URNER, MILTON G., . . . . .	Frederick.
VENABLE, RICHARD M., . . . . .	Baltimore.

## MARYLAND.—Continued.

WALSH, WILLIAM E., . . . . .	Cumberland.
WALTER, M. R., . . . . .	Baltimore.
WARFIELD, EDWIN, . . . . .	Baltimore.
WATERS, J. S. T., . . . . .	Baltimore.
WHITELOCK, GEORGE, . . . . .	Baltimore.
WILLIAMS, STEVENSON A., . . . . .	Bel Air.
WILLIS, GEORGE R., . . . . .	Baltimore.
WILMER L. ALLISON, . . . . .	La Plata.
WILMER, SKIPWITH, . . . . .	Baltimore.
WIRT, JOHN S., . . . . .	Elkton.

## MASSACHUSETTS.

ADAMS, WALTER, . . . . .	So. Framingham.
ALLEN, FRANK D., . . . . .	Boston.
AMES, JAMES BARR, . . . . .	Cambridge.
ANDERSON, GEORGE W., . . . . .	Boston.
APPLETON, JOHN H., . . . . .	Boston.
BARNES, CHARLES B., JR., . . . . .	Boston.
BEALE, JOSEPH HENRY, . . . . .	Cambridge.
BELL, C. U., . . . . .	Lawrence.
BENNETT, S. C., . . . . .	Boston.
BIGELOW, MELVILLE M., . . . . .	Boston.
BRANDEIS, LOUIS D., . . . . .	Boston.
BRANNAN, J. DODDRIDGE, . . . . .	Cambridge.
BROOKS, FRANCIS A., . . . . .	Boston.
BULLOCK, A. G., . . . . .	Worcester.
BUMPUS, EVERETT C., . . . . .	Boston.
CARVER, EUGENE P., . . . . .	Boston.
CHAMPLIN, EDGAR R., . . . . .	Boston.
CHANDLER, ALFRED D., . . . . .	Boston.
CLAPP, ROBERT P., . . . . .	Lexington.
CLARK, I. R., . . . . .	Boston.
CLIFFORD, CHARLES W., . . . . .	New Bedford.
COLLINS, PATRICK A., . . . . .	Boston.
COOLIDGE, WILLIAM H., . . . . .	Boston.
COPELAND, ALFRED M., . . . . .	Springfield.
CORCORAN, JOHN W., . . . . .	Boston.
COTTER, JAMES E., . . . . .	Boston.
CRAPO, WILLIAM W., . . . . .	New Bedford.
CROCKER, GEORGE G., . . . . .	Boston.
CUNNINGHAM, FREDERIC, . . . . .	Boston.
DABNEY, L. S., . . . . .	Boston.
DANA, WILLIAM S., . . . . .	Turner's Falls.



## MASSACHUSETTS.—Continued.

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DAVIS, SIMON, . . . . .	Boston.
DEWEY, HENRY S., . . . . .	Boston.
DICKINSON, M. F., JR., . . . . .	Boston.
DILLAWAY, W. E. L., . . . . .	Boston.
DODGE, FREDERIC, . . . . .	Boston.
DUNBAR, JAMES R., . . . . .	Boston.
ELDER, SAMUEL J., . . . . .	Boston.
EMERY, WOODWARD, . . . . .	Cambridge.
ENDICOTT, WM. C., . . . . .	Danvers.
ERNST, GEORGE A. O., . . . . .	Boston.
ESTABROOK, GEORGE W., . . . . .	Boston.
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FISH, FREDERICK P., . . . . .	Boston.
FOSTER, ALFRED D., . . . . .	Boston.
FOSTER, REGINALD, . . . . .	Boston.
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FRENCH, WILLIAM B., . . . . .	Boston.
FULLER, HORACE W., . . . . .	Boston.
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GARGAN, THOMAS J., . . . . .	Boston.
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HASKELL, FREDERIC F., . . . . .	Boston.
HEMENWAY, ALFRED, . . . . .	Boston.
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HUNT, FREEMAN, . . . . .	Boston.
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LADD, BABSON S., . . . . .	Boston.
LADD, NATH. W., . . . . .	Boston.
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## MASSACHUSETTS.—Continued.

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WHITE, LUTHER, . . . . .	Chicopee.

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MOORE, WILLIAM A., . . . . .	Detroit.
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PATTERSON, JOHN C., . . . . .	Marshall.
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YOUNG, GEORGE B.,	St. Paul.

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HILL, R. A.,	Oxford.
HOWRY, CHARLES B. (Washington, D. C.),	Oxford.
SOMERVILLE, THOMAS H.,	University.
THOMPSON, R. H.,	Jackson.

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BAKEWELL, PAUL,	St. Louis.
BALL, R. E.,	Kansas City.
BARCLAY, SHEPARD,	St. Louis.
BATES, CHARLES W.,	St. Louis.
BLAIR, ALBERT,	St. Louis.
BLAIR, JAMES L.,	St. Louis.
BOND, HENRY W.,	St. Louis.
BOYLE, WILBUR F.,	St. Louis.
BRYAN, P. TAYLOR,	St. Louis.
CHARLES, BENJAMIN H.,	St. Louis.
CHRISTIE, HARVEY L.,	St. Louis.
COCHRAN, ALEXANDER G.,	St. Louis.
CURTIS, WILLIAM S.,	St. Louis.
DEAN, O. H.,	Kansas City.
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DONALDSON, WILLIAM R.,	St. Louis.
DOUGLAS, WALTER B.,	St. Louis.
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FINKELNBURG, G. A.,	St. Louis.

## MISSOURI.—Continued.

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GIBSON, JAMES, . . . . .	Kansas City.
HAGERMAN, FRANK, . . . . .	Kansas City.
HAGERMAN, JAMES, . . . . .	St. Louis.
HARKLESS, JAMES H., . . . . .	Kansas City.
HITCHCOCK, HENRY, . . . . .	St. Louis.
HOLMES, DANIEL B., . . . . .	Kansas City.
JUDSON, FREDERICK N., . . . . .	St. Louis.
KARNES, J. V. C., . . . . .	Kansas City.
KEHR, EDWARD C., . . . . .	St. Louis.
KING, S. H., . . . . .	St. Louis.
KLEIN, JACOB, . . . . .	St. Louis.
LADD, SANFORD B., . . . . .	Kansas City.
LATHROP, GARDINER, . . . . .	Kansas City.
LAWSON, JOHN D., . . . . .	Columbia.
LEHMAN, FRED. W., . . . . .	St. Louis.
LEWIS, JAMES M., . . . . .	St. Louis.
LIONBERGER, ISAAC H., . . . . .	St. Louis.
MADILL, GEORGE A., . . . . .	St. Louis.
MCKEIGHAN, JOHN E., . . . . .	St. Louis.
MCLEOD, W. D., . . . . .	Kansas City.
NAGEL, CHARLES, . . . . .	St. Louis.
NEW, ALEXANDER, . . . . .	Kansas City.
NOBLE, JOHN W., . . . . .	St. Louis.
OTTOFY, L. FRANK, . . . . .	St. Louis.
PERRY, WILLIAM C., . . . . .	Kansas City.
PRATT, WALLACE, . . . . .	Kansas City.
RULE, VIRGIL, . . . . .	St. Louis.
SHERWOOD, ADIEL, . . . . .	St. Louis.
SPENCER, SELDEN P., . . . . .	St. Louis.
TAUSSIG, JAMES, . . . . .	St. Louis.
THAYER, AMOS M., . . . . .	St. Louis.
THOMPSON, WILLIAM B., . . . . .	St. Louis.
TICHENOR, CHARLES O., . . . . .	Kansas City.
TITUS, FRANK, . . . . .	Kansas City.
TRIMBLE, J. MCD., . . . . .	Kansas City.
WARD, HUGH C., . . . . .	Kansas City.
WILFLEY, LEBBEUS M., . . . . .	St. Louis.
WITHROW, JAMES E., . . . . .	St. Louis.
WOOD, JOHN M., . . . . .	St. Louis.

## MONTANA.

CORBETT, FRANK E., . . . . .	Butte.
COTTER, JOHN W., . . . . .	Butte.
DIXON, WILLIAM W., . . . . .	Butte.
SANDERS, JAMES U., . . . . .	Helena.
SANDERS, WILBUR F., . . . . .	Helena.
SCALLON, WILLIAM, . . . . .	Butte.

## NEBRASKA.

AMES, JOHN H., . . . . .	Lincoln.
BARTLETT, EDMUND M., . . . . .	Omaha.
BAXTER, IRVING F., . . . . .	Omaha.
BRECKENRIDGE, RALPH W., . . . . .	Omaha.
CARROLL, WILLIAM J., . . . . .	Omaha.
COWIN, J. C., . . . . .	Omaha.
DEWESE, J. W., . . . . .	Lincoln.
GREENE, CHARLES J., . . . . .	Omaha.
HALL, MATTHEW A., . . . . .	Omaha.
HALL, THOMAS L., . . . . .	Ord.
HARTIGAN, MICHEL A., . . . . .	Hastings.
HARWOOD, N. S., . . . . .	Lincoln.
KINKAID, M. P., . . . . .	O'Neill.
MANDERSON, CHARLES F., . . . . .	Omaha.
MARTIN, FRANCIS, . . . . .	Falls City.
MONTGOMERY, CARROLL S., . . . . .	Omaha.
MUNGER, W. H., . . . . .	Fremont.
McHUGH, WILLIAM D., . . . . .	Omaha.
SHEEAN, JAMES B., . . . . .	Omaha.
SLABAUGH, W. W., . . . . .	Omaha.
SMITH, HOWARD B., . . . . .	Omaha.
THURSTON, JOHN M., . . . . .	Omaha.
WAKELEY, ELEAZER, . . . . .	Omaha.
WEBSTER, JOHN L., . . . . .	Omaha.
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## NEW HAMPSHIRE.

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STREETER, FRANK S., . . . . .	Concord.

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 BUTLER, WILLIAM ALLEN, JR., . . . . . New York.  
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 DAVIES, WILLIAM GILBERT, . . . . . New York.  
 DAVIS, VERNON M., . . . . . New York.  
 DAVISON, CHARLES A., . . . . . New York.  
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HOADLY, GEORGE, . . . . .	New York.
HORNBLOWER, WILLIAM B., . . . . .	New York.
HOTCHKISS, WILLIAM HORACE, . . . . .	Buffalo.
HOYE, STEPHEN M., . . . . .	Brooklyn.
HUBBARD, HARRY, . . . . .	New York.
HUBBARD, THOMAS H., . . . . .	New York.
HUFFCUT, E. W., . . . . .	Ithaca.
HUGHES, CHARLES E., . . . . .	New York.
HULL, GEORGE S., . . . . .	Buffalo.
INGALSBE, GRENVILLE M., . . . . .	Sandy Hill.
ISAACS, M. S., . . . . .	New York.
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KELLOGG, HERBERT H., . . . . .	New York.
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KENYON, WILLIAM H., . . . . .	New York.
KIDDLE, ALFRED W., . . . . .	New York.
KILVERT, THOMAS, . . . . .	New York.
KIRLIN, J. PARKER, . . . . .	New York.
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LEAVITT, JOHN BROOKS, . . . . .	New York.
LEVIS, HOWARD C., . . . . .	Schenectady.
LOGAN, WALTER S., . . . . .	New York.
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MILLER, W. W., . . . . .	New York.
MILNOR, M. CLEILAND, . . . . .	New York.
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MCCOOK, JOHN J., . . . . .	New York.
McKINNEY, WILLIAM M., . . . . .	Northport.
McLEAN, DONALD, . . . . .	New York.
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NICHOLS, GEORGE L., . . . . .	New York.
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OPDYKE, WILLIAM S., . . . . .	New York.
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REDDING, JOSEPH D., . . . . .	New York.
REDDING, WILLIAM A., . . . . .	New York.
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RICH, BURDETTE A., . . . . .	Rochester.
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ROOT, ELIHU, . . . . .	New York.
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SMITH, NELSON, . . . . .	New York.
SMITH, SIDNEY, . . . . .	New York.
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GLENN, R. B., . . . . .	Winston.
HILL, THOMAS N., . . . . .	Halifax.
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## OHIO.

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FOLLETT, MARTIN DEWEY, . . . . .	Marietta.
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GOULDER, HARVEY D., . . . . .	Cleveland.
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GRANGER, SHERMAN M., . . . . .	Zanesville.
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HADDEN, ALEXANDER, . . . . .	Cleveland.
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MATTHEWS, C. BENTLEY, . . . . .	Cincinnati.

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PARKER, ROBERT S., . . . . .	Bowling Green.
PATTERSON, M. R., . . . . .	Columbus.
PECK, HIRAM D., . . . . .	Cincinnati.
PIKE, LOUIS H., . . . . .	Toledo.
PRATT, CHARLES, . . . . .	Toledo.
QUAIL, FRANK A., . . . . .	Cleveland.
RANDALL, E. O., . . . . .	Columbus.
RANNEY, HENRY C., . . . . .	Cleveland.
ROBERTSON, C. D., . . . . .	Cincinnati.
SALTZGABER, GAYLARD M., . . . . .	Van Wert.
SANDERS, W. B., . . . . .	Cleveland.
SANDERSON, THOMAS W., . . . . .	Youngstown.
SAYLER, JOHN RYNER, . . . . .	Cincinnati.
SENEY, HENRY W., . . . . .	Toledo.
SHAW, R. K., . . . . .	Marietta.
SMEDES, JOHN MARSHALL, . . . . .	Cincinnati.
SMITH, ALEXANDER L., . . . . .	Toledo.
SMITH, H. LINDALE, . . . . .	Cleveland.
SMITH, RUFUS B., . . . . .	Cincinnati.
SPEAR, WILLIAM T., . . . . .	Columbus.
SQUIRE, ANDREW, . . . . .	Cleveland.
STACKHOUSE, A. J., . . . . .	Fostoria.
STEWART, GILBERT H., . . . . .	Columbus.
STOEHR, OSCAR, . . . . .	Cincinnati.
STRONG, EDWARD W., . . . . .	Cincinnati.
SULLIVAN, JOHN D., . . . . .	Columbus.
SWAYNE, FRANCIS B. (New York, N. Y.), . . .	Toledo.
TAFT, WILLIAM H., . . . . .	Cincinnati.
TALCOTT, WILLIAM E., . . . . .	Cleveland.
TOLLES, SHIRLEY H., . . . . .	Cleveland.
TROUP, JAMES O., . . . . .	Bowling Green.
WADE, DECIUS S., . . . . .	Andover.
WALD, GUSTAVUS H., . . . . .	Cincinnati.
WARRINGTON, JOHN W., . . . . .	Cincinnati.
WHEELER, SETH S., . . . . .	Lima.
WILLIAMSON, SAMUEL E., . . . . .	Cleveland.
WORTHINGTON, WILLIAM, . . . . .	Cincinnati.
YOUNG, GEORGE R., . . . . .	Dayton.

## OKLAHOMA TERRITORY.

ASP, HENRY E., . . . . . Guthrie.  
 SHARTEL, JOHN W., . . . . . Guthrie.

## OREGON.

CAREY, CHARLES H., . . . . . Portland.  
 COX, L. B., . . . . . Portland.  
 SCHNABEL, CHARLES J., . . . . . Portland.

## PENNSYLVANIA.

ADAMS, JOSIAH R., . . . . . Philadelphia.  
 ADDICKS, WILLIAM H., . . . . . Philadelphia.  
 ALLINSON, EDWARD P., . . . . . Philadelphia.  
 ANDRE, JOHN K., . . . . . Philadelphia.  
 ASHHURST, RICHARD L., . . . . . Philadelphia.  
 BAER, GEORGE F., . . . . . Reading.  
 BAYARD, JAMES WILSON, . . . . . Philadelphia.  
 BEEBER, DIMNER, . . . . . Philadelphia.  
 BERTOLETTE, FREDERICK, . . . . . Mauch Chunk.  
 BISPHAM, GEORGE TUCKER, . . . . . Philadelphia.  
 BREDIN, JAMES, . . . . . Pittsburg.  
 BRIGHTLY, F. F., . . . . . Philadelphia.  
 BROWN, FRANCIS SHUNK, . . . . . Philadelphia.  
 BROWN, J. HAY, . . . . . Lancaster.  
 BROWN, JOHN A., . . . . . Philadelphia.  
 BROWN, JOHN DOUGLASS, JR., . . . . . Philadelphia.  
 BUCHER, JOSEPH C., . . . . . Lewisburg.  
 BUDD, HENRY, . . . . . Philadelphia.  
 BURNETT, WILLIAM H., . . . . . Philadelphia.  
 CARSON, HAMPTON L., . . . . . Philadelphia.  
 CHAMBERS, FRANCIS T., . . . . . Philadelphia.  
 CHRISTY, GEORGE H., . . . . . Pittsburg.  
 CUYLER, THOMAS DEWITT, . . . . . Philadelphia.  
 DALE, RICHARD C., . . . . . Philadelphia.  
 DANA, SAMUEL W., . . . . . New Castle.  
 DICKSON, SAMUEL, . . . . . Philadelphia.  
 DUANE, RUSSELL, . . . . . Philadelphia.  
 EVANS, J. A., . . . . . Pittsburg.  
 FARQUHAR, GUY E., . . . . . Pottsville.  
 FENTON, HECTOR T., . . . . . Philadelphia.  
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 FRALEY, JOSEPH C., . . . . . Philadelphia.  
 GEYELIN, HENRY LAUSSAT, . . . . . Philadelphia.



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GILBERT, LYMAN D., . . . . .	Harrisburg.
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## PENNSYLVANIA.—Continued.

WATSON, D. T., . . . . .	Pittsburg.
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WILLARD, EDWARD N., . . . . .	Scranton.
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## RHODE ISLAND.

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CURTIS, HARRY C., . . . . .	Providence.
EATON, AMASA M., . . . . .	Providence.
HOGAN, JOHN W., . . . . .	Providence.
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POTTER, DEXTER B., . . . . .	Providence.
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STEARNS, CHARLES F., . . . . .	Providence.
STINESS, JOHN H., . . . . .	Providence.
THURSTON, WILMARTH H., . . . . .	Providence.
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WOODS, JOHN CARTER BROWN, . . . . .	Providence.

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BUIST, HENRY, . . . . .	Charleston.
JOHNSTONE, GEORGE, . . . . .	Newberry.
MORDECAI, T. MOULTRIE, . . . . .	Charleston.
SMYTHE, AUGUSTINE T., . . . . .	Charleston.
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AIKENS, FRANK R., . . . . .	Sioux Falls.
BAILEY, CHARLES O., . . . . .	Sioux Falls.
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WELLS, ROLLIN J., . . . . .	Sioux Falls.

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COOPER, EDMUND, . . . . .	Shelbyville.
INGERSOLL, HENRY H., . . . . .	Knoxville.
JACKSON, ROBERT F., . . . . .	Nashville.
LEA, OVERTON, . . . . .	Nashville.
MALONE, JAMES H., . . . . .	Memphis.
MALONE, THOS. H., . . . . .	Nashville.
MARKS, ALBERT D., . . . . .	Nashville.
PILCHER, JAMES S., . . . . .	Nashville.
RAMAGE, B. J., . . . . .	Sewanee.
SANFORD, EDWARD T., . . . . .	Knoxville.
SWANEY, W. B., . . . . .	Chattanooga.
TILLMAN, A. M., . . . . .	Nashville.
TILLMAN, GEORGE N., . . . . .	Nashville.
VAN DEVENTER, HORACE, . . . . .	Knoxville.
VERTREES, J. J., . . . . .	Nashville.
WASHINGTON, WILLIAM H., . . . . .	Nashville.
YOUNG, DAVID, K., . . . . .	Clinton.

## TEXAS.

CLARK, WILLIAM H., . . . . .	Dallas.
COKE, HENRY C., . . . . .	Dallas.
DILLARD, F. C., . . . . .	Sherman.
GAINES, R. R., . . . . .	Austin.
GOULD, ROBERT S., . . . . .	Austin.
HARWOOD, T. F., . . . . .	Gonzales.
LINDSLEY, PHILIP, . . . . .	Dallas.
MILLER, T. S., . . . . .	Dallas.
SMITH, ROBERT WAVERLY, . . . . .	Galveston.
TOWNES, JOHN C., . . . . .	Austin.
WEST, ROBERT G., . . . . .	Austin.

## UTAH.

SHEPARD, RICHARD B., . . . . . Salt Lake City.

## VERMONT.

BARBER, O. M., . . . . . Arlington.  
 BUTTON, FREDERICK H., . . . . . Middlebury.  
 BUTTON, WM. H., . . . . . Middlebury.  
 McCULLOUGH, JOHN G., . . . . . No. Bennington.  
 PHELPS, EDWARD J., . . . . . Burlington.  
 TAFT, ELIHU B., . . . . . Burlington.  
 WILDS, CHARLES M., . . . . . Middlebury.

## VIRGINIA.

ANDERSON, WILLIAM A., . . . . . Lexington.  
 CABELL, JAMES ALSTON, . . . . . Richmond.  
 COKE, JOHN A., . . . . . Richmond.  
 CONRAD, HOLMES, . . . . . Winchester.  
 GARNETT, THEODORE S., . . . . . Norfolk.  
 GILLIAM, MARSHALL M., . . . . . Richmond.  
 GILMORE, JAMES H., . . . . . Marion.  
 GLASGOW, WILLIAM A., JR., . . . . . Roanoke.  
 GRAVES, CHARLES A., . . . . . Lexington.  
 GRIFFIN, S., . . . . . Bedford City.  
 GUY, JACKSON, . . . . . Richmond.  
 HAMILTON, ALEXANDER, . . . . . Petersburg.  
 HATTON, GOODRICH, . . . . . Portsmouth.  
 HENRY, WM. WIRT, . . . . . Richmond.  
 HUGHES, ROBERT M., . . . . . Norfolk.  
 LEWIS, LUNSFORD L., . . . . . Richmond.  
 LYONS, JAMES, . . . . . Richmond.  
 MUNFORD, BEVERLEY B., . . . . . Richmond.  
 McRAE, WILLIAM P., . . . . . Petersburg.  
 PAGE, ROSEWELL, . . . . . Richmond.  
 PATTESON, S. S. P., . . . . . Richmond.  
 PICKRELL, JOHN, . . . . . Richmond.  
 PRENTIS, ROBERT R., . . . . . Suffolk.  
 SEATON, EMMETT, . . . . . Richmond.  
 SMITH, WILLIS B., . . . . . Richmond.  
 THOM, ALFRED P., . . . . . Norfolk.  
 TUCKER, HENRY ST. GEORGE, . . . . . Lexington.  
 WATTS, LEGH R., . . . . . Portsmouth.  
 WILLIAMS, CHARLES U., . . . . . Richmond.  
 WILLIAMS, E. RANDOLPH, . . . . . Richmond.  
 WILSON, WILLIAM L., . . . . . Lexington.

## WASHINGTON.

FORSTER, GEORGE M., . . . . .	Spokane.
HANFORD, C. H., . . . . .	Seattle.
HUGHES, E. C., . . . . .	Seattle.
SHEPARD, CHARLES E., . . . . .	Seattle.

## WEST VIRGINIA.

AMBLER, B. MASON, . . . . .	Parkersburg.
ARCHER, V. B., . . . . .	Parkersburg.
HIGGINBOTHAM, C. C., . . . . .	Buckhannon.
HUBBARD, WILLIAM P., . . . . .	Wheeling.
HUTCHINSON, JOHN F., . . . . .	Parkersburg.
MERRICK, CHARLES D., . . . . .	Parkersburg.
TURNER, SMITH D., . . . . .	Parkersburg.
VAN WINKLE, W. W., . . . . .	Parkersburg.

## WISCONSIN.

BARBER, CHARLES, . . . . .	Oshkosh.
BARTLETT, WILLIAM PITT, . . . . .	Eau Claire.
BASHFORD, R. M., . . . . .	Madison.
BOTTUM, E. H., . . . . .	Milwaukee.
BURKE, JOHN F., . . . . .	Milwaukee.
BUSHNELL, ALLEN R., . . . . .	Madison.
CARY, ALFRED L., . . . . .	Milwaukee.
DOYLE, PETER, . . . . .	Milwaukee.
FAIRCHILD, H. O., . . . . .	Green Bay.
FISH, JOHN T., . . . . .	Milwaukee.
FLANDERS, JAMES G., . . . . .	Milwaukee.
FRAWLEY, THOMAS F., . . . . .	Eau Claire.
FROST, EDWARD W., . . . . .	Milwaukee.
GILSON, N. S., . . . . .	Fond du Lac.
GRACE, H. H., . . . . .	West Superior.
GREENE, GEORGE G., . . . . .	Green Bay.
GREGORY, CHARLES NOBLE, . . . . .	Madison.
HANSEN, OTTO R., . . . . .	Milwaukee.
HUNTER, CHARLES F., . . . . .	Milwaukee.
JEFFRIS, MALCOLM G., . . . . .	Janesville.
JENKINS, JAMES G., . . . . .	Milwaukee.
JOHNSON, D. H., . . . . .	Milwaukee.
JONES, BURR W., . . . . .	Madison.
LEWIS, H. M., . . . . .	Madison.
LUDWIG, JOHN C., . . . . .	Milwaukee.
MALLORY, JAMES A., . . . . .	Milwaukee.

## WISCONSIN.—Continued.

MILLER, B. K., . . . . .	Milwaukee.
MILLER, GEORGE P., . . . . .	Milwaukee.
MORRIS, HOWARD, . . . . .	Milwaukee.
NOYES, GEORGE H., . . . . .	Milwaukee.
OGDEN, LEWIS M., . . . . .	Milwaukee.
ORTON, PHILO A., . . . . .	Darlington.
PERELES, JAMES M., . . . . .	Milwaukee.
PERELES, THOMAS JEFFERSON, . . . . .	Milwaukee.
QUARLES, CHARLES, . . . . .	Milwaukee.
QUARLES, JOSEPH V., . . . . .	Milwaukee.
SEAMAN, WILLIAM H., . . . . .	Sheboygan.
SIEBECKER, ROBERT G., . . . . .	Madison.
SPOONER, CHARLES P., . . . . .	Milwaukee.
SPOONER, JOHN C., . . . . .	Madison.
STAFFORD, W. H., . . . . .	Chippewa Falls.
STARK, JOSHUA, . . . . .	Milwaukee.
STEVENS, BREEZE J., . . . . .	Madison.
SUTHERLAND, GEORGE E., . . . . .	Milwaukee.
TENNEY, DANIEL K., . . . . .	Madison.
TURNER, W. J., . . . . .	Milwaukee.
VAN DYKE, GEORGE D., . . . . .	Milwaukee.
VAN DYKE, WILLIAM D., . . . . .	Milwaukee.
VILAS, EDWARD P., . . . . .	Milwaukee.
VROMAN, CHARLES E., . . . . .	Green Bay.
WEBSTER, W. H., . . . . .	Oconto.
WIGMAN, J. H. M., . . . . .	Green Bay.
WINKLER, FREDERICK C., . . . . .	Milwaukee.

## WYOMING.

BROWN, MELVILLE C., . . . . .	Laramie.
BURKE, TIMOTHY F., . . . . .	Cheyenne.
CORN, SAMUEL T., . . . . .	Cheyenne.
CORTHELL, NELLIS E., . . . . .	Laramie.
FOWLER, BENJAMIN F., . . . . .	Cheyenne.
KNIGHT, JESSE, . . . . .	Cheyenne.
LACEY, JOHN W., . . . . .	Cheyenne.
POTTER, CHARLES N., . . . . .	Cheyenne.
RINER, JOHN A., . . . . .	Cheyenne.
VAN DEVANTER, WILLIS, (Washington, D. C.), . . . . .	Cheyenne.

## RECAPITULATION.

STATES.	NO. OF MEMBERS.	STATES.	NO. OF MEMBERS.
Alabama, . . . . .	6	Nebraska, . . . . .	26
Arizona, . . . . .	6	New Hampshire, . . . . .	16
Arkansas, . . . . .	13	New Jersey, . . . . .	33
California, . . . . .	16	New Mexico, . . . . .	1
Colorado, . . . . .	26	New York, . . . . .	173
Connecticut, . . . . .	38	North Carolina, . . . . .	8
Delaware, . . . . .	12	North Dakota, . . . . .	3
District of Columbia, . . . . .	49	Ohio, . . . . .	110
Florida, . . . . .	7	Oklahoma Territory, . . . . .	2
Georgia, . . . . .	38	Oregon, . . . . .	3
Idaho, . . . . .	5	Pennsylvania, . . . . .	131
Illinois, . . . . .	109	Rhode Island, . . . . .	17
Indian Territory, . . . . .	2	South Carolina, . . . . .	8
Indiana, . . . . .	65	South Dakota, . . . . .	5
Iowa, . . . . .	33	Tennessee, . . . . .	23
Kansas, . . . . .	4	Texas, . . . . .	11
Kentucky, . . . . .	28	Utah Territory, . . . . .	1
Louisiana, . . . . .	22	Vermont, . . . . .	7
Maine, . . . . .	23	Virginia, . . . . .	31
Maryland, . . . . .	66	Washington, . . . . .	4
Massachusetts, . . . . .	120	West Virginia, . . . . .	8
Michigan, . . . . .	83	Wisconsin, . . . . .	53
Minnesota, . . . . .	12	Wyoming, . . . . .	10
Mississippi, . . . . .	5		
Missouri, . . . . .	63		
Montana, . . . . .	6		
		Total, . . . . .	1,541



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## APPENDIX.

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# THE PRESIDENT'S ADDRESS.

BY

CHARLES F. MANDERSON,

VICE-PRESIDENT,

OF OMAHA, NEBRASKA.

*Gentlemen of the American Bar Association :*

An eminent Englishman, your distinguished guest a few years ago, said of this Association in his matchless address : " You are a Congress of Lawyers of the United States, met together to take counsel, in no narrow spirit, on questions affecting the interests of your profession ; to consider necessary amendments in the law which experience and time develop ; and to examine the current of judicial decision and of legislation, State and Federal, and whither that current tends."

No clearer statement of our purposes and aims could be made, and in the twenty-one years that have passed away since the American Bar Association was organized, conforming itself to its lofty purposes and high aims, it has surely subserved the public welfare, and lived up to its original declaration—that it would "advance the science of jurisprudence, promote the administration of justice and uphold the honor of the profession of the law."

The few who met in 1878 to organize the Association, representing but few of the States, have become the many, and to-day every State, except Nevada, and every Territory, is represented in its membership of fifteen hundred lawyers. Upon its roll will be found the leaders of their profession and the names of those most distinguished in the law and in official life.

In its list of Presidents are the professional immortals: Broadhead, Bristow, Potter, Lawton, Stevenson, Wright,

Field, Tucker, Cooley, and the survivors of those who have been our leaders, from Phelps in 1880 to Choate in 1899, have been, are, and we hope may long be, the guiding lights of the profession.

Called by the all too generous consideration of the Executive Committee to the performance of this duty, I approached it with great reluctance and accepted the honorable task, largely, that, while appreciative of my own short-comings, I felt that I might rely with confident assurance upon that generous forbearance and kindly aid at your hands that are distinguishing characteristics of our craft.

It is a matter of sincere regret to me, I know it is subject for grievous disappointment to you, that the accomplished President of the Association is not with us. To a fascinating charm of manner, all his own, is added such learning and accomplishment, that the annual address would be one to listen to with breathless attention, and would command the interest of the country at large. We can readily imagine that he would clothe even the dry bones of "the noteworthy changes in statute law, State and Federal," with imagery so attractive and humor so delightful that even the putative legislative fathers of the motley offspring would not recognize the children of their begetting.

But this delight is not to be ours. We must content ourselves with sending across the great ocean, to the Court of St. James, our fraternal greetings to our President—who is winning much of honor and affection, and we hope much of diplomatic gain for the Republic—the Honorable Joseph H. Choate.

#### OBITUARIES.

The passing years bring with our increasing membership a proportionate increase in the list of those who have passed over to the silent majority.

The records of the Courts in which they practiced will give the estimate placed upon them by their local professional associates.

The report of the Obituary Committee of the Association will give the story of their lives, and tell of their professional careers.

Of those of our number who died since August, 1898, there are three with names so honored by the country and revered by the profession, that I would be lacking in the performance of a sad duty if I did not briefly refer to them.

THOMAS M. COOLEY.

Ex-President of the American Bar Association, the able lawyer, erudite professor, capable judge, accomplished author, died September 12th, 1898, aged seventy-four years. His busy life was full of good to the public, and his works a boon to the profession.

So long as Constitutional government exists his great book, "Constitutional Limitations upon the Legislative Power," will be "a light to our path and a guide to our feet."

On September 28th, 1898, there passed through the portals of death that noble son of Delaware,

THOMAS F. BAYARD.

Born in the American purple, of an ancestry ever distinguished for patriotism and rare mental, moral and physical endowments, he was easily the first of his illustrious name. The leader of the Bar of his State while yet a young man, he would have stepped to the front rank of his profession had not his capacity for political leadership, and his many graces of mind and body brought him naturally into public life. He succeeded his lawyer father in the Senate of the United States, being the fourth of his family to reach that exalted station. For sixteen years in that body he led his side of the Chamber with gracious courtesy and masterful ability, becoming President *pro tempore* of the Senate. He resigned, to be Secretary of State, surrendering the portfolio to his successor after a most creditable career.

During the last term of President Cleveland he served his country most acceptably as Ambassador to Great Britain. In all stations of life he did well his part, and of him it can well be said, as of the Chevalier Bayard of the olden time, he was "*sans peur et sans reproche*."

While presenting his side of an important controversy to the Supreme Court of the United States, with vigorous force, that showed no impairment of his mental powers,

#### AUGUSTUS H. GARLAND

was stricken by the shaft of death. He fell as a soldier falls—upon the firing line. His career was exceptional and eventful. Born in Tennessee, educated in Kentucky, he was called to the Bar of Arkansas. He was a delegate to the State Convention that passed the Ordinance of Secession; served in both houses of the Confederate Congress; at the close of the War, being elected to the United States Senate, he won the test-oath case as to lawyers in the Supreme Court; was Governor of Arkansas; elected again to the United States Senate, he took his seat in 1877, was re-elected in 1883, and resigned in 1885 to accept the Attorney-Generalship, which place he filled with eminent ability until the close of the Administration of President Cleveland, when he retired to private life and the active practice of the profession he adorned.

Personal service for some years in the highest deliberative body in the country with Mr. Garland and Mr. Bayard, taught me such respect for their ability, admiration for their versatile talents and regard for their attractive attributes that I could not refrain from giving this slight tribute to their memories.

#### STEPHEN J. FIELD.

On March 10th, 1863, President Abraham Lincoln appointed as Associate Justice of the Supreme Court of the United States Stephen J. Field, of California.

Of a family noted for vigorous ability and virile powers, he brought to his high place a ripe experience, having been distinguished at the bar and on the bench. For nearly six years he had been a justice of the Supreme Court of California. Ascending the bench of the highest Federal tribunal on March 20th, 1863, in the "midst of war's alarums," during all the time of the fratricidal conflict, the great period of reconstruction, while the "effort to re-establish the nation and adjust all things to the changed political, social and economical conditions" was on, and continuing through the years of enterprise, invention, investment and marvelous material development that followed the war, for thirty-four years, six months and eleven days, or until December 1st, 1897, this remarkable man remained upon the Supreme Court bench, meeting the grave questions that arose with such persevering industry, grave disregard of popular clamor, rugged honesty of purpose and such marked ability that even those who criticised and condemned some of his decisions were compelled to give their respect to the great power of the venerable jurist. He wrote during his service 620 opinions, and if to these are added those published in the Circuit Court and the Supreme Court of California it will be seen that he voiced the decision in 1,042 important and leading cases. In President McKinley's letter, accepting his resignation, there are these words of appreciation: "I congratulate you most heartily upon a service of such exceptional duration, fidelity and distinction. Upon your retirement both the bench and the country will sustain a great loss, but the high character and great ability of your work will live and long be remembered, not only by your colleagues, but by your grateful fellow countrymen."

On April 9th, 1899, at the age of eighty-two years, full of honors as of years, he passed away. Meet and fitting is it that we should pay tribute to his memory.

#### STATE BAR ASSOCIATIONS.

A notable and encouraging sign of the times, presaging much good to the profession and benefit to the public, is the

increased interest felt in the proceedings of the local Bar Associations. Nearly every State has an active, vigorous organization, and very many of the counties and Judicial Districts have their societies, composed of the best professional material of the vicinity. They have raised and materially elevated the standard of qualifications for admission to the Bar, have prompted the revision and perfection of codes, reformed many defective statutes, helped materially to the uniformity of laws, promoted assiduously the administration of justice and borne aloft, advancing ever to the front, the pure standard of professional ethics. Leader in this great work is the Association of the Empire State. Other States, fired by its great example, are pressing forward. I doubt if ever in the country's history have there been annual meetings of the local societies so fertile in good results, where papers have been read of greater interest than in this year of Grace.

By the terms of our by-laws each State Bar Association is privileged to send delegates to our annual meetings. We warmly greet those who are with us and welcome them to full participation in our exercises. It is worthy of thought whether some closer bond of fellowship and nearer affiliation between the Federal and State Associations is not advisable, and I commend such action to your consideration.

The Bar of the State of Illinois presents a matter upon which I am pleased to make comment.

JOHN MARSHALL.

"The Expounder of the Constitution" ascended the bench of the Supreme Court of the United States, as the Third Chief Justice, one hundred years ago the coming fourth day of February, 1901. From the day of entrance upon the performance of the grave duties and formative functions of his exalted place, to July 6th, 1835, a period of thirty-four years, six months and two days, he gave to the people and posterity the devoted, earnest effort of a master mind. Serving with honorable distinction as a soldier during the Revolution ; with



signal ability as member of the Congress, Secretary of State and as Envoy to France at a most critical period, his arduous and painstaking labors for the young Republic won the respect, admiration and gratitude of all. Active and influential in securing the adoption of the Constitution, when he came to the great position where he was to construe its meaning and give vital force and sustaining effect to its terms, he brought to the performance of the important duty a clearness of vision, an honesty of purpose, a calm, deliberate judgment and a judicial courage unequalled in the annals of jurisprudence.

It has been well said: "He found the Constitution paper and he made it power; he found it a skeleton and clothed it with flesh and blood." Chief Justice Waite, speaking of him, said: "With his irresistible logic, enforced by his cogent English, he developed the hidden treasures of the Constitution, demonstrated its capacities, and showed beyond all possibility of doubt that a government rightfully administered under its authority could protect itself against itself and against the World."

The parks and grounds of the Capitol city of the Republic have their full measure of figures of warriors. "The man on horseback," and he who on the quarterdeck has acquired enduring fame, may well have their heroic deeds perpetuated in bronze and upon lasting tablets that shall recite their deeds of valor. But "peace hath her victories no less renowned than war." It is not a credit to the Republic that among all the figures of bronze at Washington, that ornament or mar its public places, there is but one dedicated to the memory of a great jurist, but it is comforting to the American lawyer that that one, erected by the Bar and the Congress, is of Chief Justice John Marshall. Unveiled on May 10th, 1884, with appropriate ceremonies, in the presence of both Houses of Congress, the tribute to the great dead, made by the orator of the day, Mr. William Henry Rawle, was a fitting setting for the dignified figure resting under the shadow of the Capitol.

The Illinois State Bar Association unanimously adopted a resolution, to be presented by its delegates to this Association, proposing that February 4th, 1901, be called "John Marshall Day," and that by the united action of Congress, the courts, the Executive Departments and the Bar, the people may "commemorate the great event which gave to the United States the powerful mind of Marshall and harmony and strength to the great instrument, the Constitution of the United States." Such a celebration will add to our respect for law and for those who maintain the purity of the Judiciary, which Marshall said "comes home in its effects to every man's fireside and passes on his property, his reputation, his life, his all. The greatest scourge an angry heaven ever inflicted upon an ungrateful and a sinning people was an ignorant, a corrupt, or a dependent Judiciary."

Let us not bring upon ourselves this scourge by the sin of ingratitude; but, rejoicing in the beneficent career of our greatest jurist, thank God for him and revere his memory. I hope that by appropriate action the American Bar Association may fittingly supplement that of the State of Illinois.

#### THE INTERNATIONAL LAW ASSOCIATION.

It is a matter for sincere congratulation that present with us, interested in our deliberations and concerned in the results thereof are many eminent jurists, members of the Association for the Reform and Codification of the Law of Nations, now known as "The International Law Association." Formed at Brussels in 1873, it has held eighteen conferences, productive of much that has been beneficial to all nations. Of its membership are the leaders of the profession abroad and gentlemen of great eminence from all the great powers. In its ranks are not only jurists and those learned in the law, but also economists, representatives of commerce, statesmen and philanthropists. Its discussions have had, and will continue to exert, powerful influence on all the elements which go to the making of international law. On the important questions

of execution of foreign judgments ; the neutralization of the seas and inter-ocean canals ; rights in territorial waters ; the rules of recovery for collisions and accidents upon the high seas ; conflicting rules of nationality ; the stoppage of the use and abuse of the twin destroyers—gunpowder and alcohol—in the “ Dark Continent ” ; the non-recognition of the status of slavery in European protectorates in Africa, and the many other incidents to the assumption of “ the white man’s burden ” in barbarous and semi-civilized, lands, and, above all, the reduction of military and naval forces among the nations ; the humanizing of war ; the lessening of warfare by mediation and its gradual extinction by arbitration, it will be a guiding hand and a shaping force.

Now that the divine command—“ Peace on earth, good will towards men ”—seems to be approaching its fulfilment by the efforts of disarmament conventions and peace congresses, the code of procedure that must govern courts of international arbitration must and will largely emanate from this association. The period when nations will war no more is, probably, far in the dim and distant future. National jealousies, commercial competition, desire for expansion, imperialistic ideas, will not down while men, combating individually for supremacy, give to the State the same combative instincts and desire for advancing power.

True it is that there are some national conditions far more disastrous than war, and until the millennium shall come, war from some causes is the inevitable ; but, surely, there are many international issues that can and will be settled by arbitral tribunals, and the signs of the times were never more propitious than to-day. The great association we greet as guests will speed the time and blaze the way “ to hasten that most difficult of all evolutions—the evolution of perpetual peace.”

For the first time in its history it meets in conference within the confines of the Great Republic. We welcome it with fraternal regard and to every member extend the right hand of fellowship.

May its deliberations be guided by wisdom and the results meet with the applauding recognition of an enlightened world.

#### THE PEACE CONFERENCE AT THE HAGUE.

Nature, in her evolutionary processes, moves with a deliberation only equalled by her precision. Her motto seems to be, "make haste slowly." The reaching of man's best estate, that millennium of peace that lies under the rainbow of promise, seems to our impatient souls to be much delayed. In the presence of the mighty armies of the great European powers; the upbuilding and maintenance of the gigantic navies; the annual increase of the budgets to keep the nations upon a war footing; the piling up of their stupendous indebtedness; the development of more destructive fighting machines; the increase in force and power of the great guns; the forcing of more and more velocity and penetrative power into the enormous projectiles; the invention of new and fearful explosives; in short, as we behold all the power of civilization turned into preparation for war, more destructive than the world has ever known, it seems as though the dove, bearing the olive branch, will never return to the ark, but that mankind would continue the struggle for national supremacy in a sea of blood.

We feel that De Maistre spoke truly when he said: "History, unfortunately, proves that war is, in a certain sense, the habitual state of mankind; that is, that human blood must be shed, here and there, without interruption, upon the earth; and that a state of peace is, for each nation, but a respite." Said the fiery Mirabeau to the Quaker: "Thou wantest peace? Well, it is the weakness which invites war."

The student of history reads of the slow steps from the "pure savagery of the individual man," when he slew his fellow from mere appetite for blood, or hope of personal profit, down through the ages when the will of the family and then of the tribe was substituted for single caprice; or the long period that followed before the civic federation, called by

whatever name, came to control blood thirst and of the still longer time before the command of the Decalogue, "Thou shalt not kill," could be set aside by a few, the very few that, as the representative heads of great nations, hold in their hands the power of life and death, and reaching near unto the end of the nineteenth century, looks upon the state of Europe, with every city a fortification and every hamlet a garrison, with boundary lines marked by guns and governments held in place by bayonets, and despairs of the coming described long time ago, "how beautiful upon the mountains are the feet of him that bringeth good tidings, that publisheth peace."

But, suddenly, in the East, while men despaired, there shone a great light, like a new star of Bethlehem. The greatest autocrat in the world, the supreme ruler of one hundred and thirty million subjects who do his bidding, the all-powerful commander of over four million drilled and disciplined soldiers, sounded the recall to armed Europe. The great Tsar of Russia, head of a military empire so mighty as to be unconquerable, invites the civilized world to meet in conference that armies may be reduced, navies be lessened, oppressive taxation for war budgets be relieved, and peace, blessed, lasting peace dawn upon the nations.

It was but three years ago that our distinguished guest, Lord Russell of Killowen, in his superb argument for the settlement of international disputes by arbitration, while expressing his hopes, as one who looked forward to remote time for their fulfilment, voiced his fears in these words: "Who can say that these times breathe the spirit of peace? There is war in the air. Nations armed to the teeth prate of peace, but there is no sense of peace. One sovereign burthens the industry of his people to maintain military and naval armament at war strength and his neighbor does the like and justifies it by the example of the other; and Great Britain, insular though she be, with her imperial interests scattered the world over, follows, or is forced to follow, in the wake. If there be no war, there is, at least, an armed peace" \* \* \*

“When will governments learn the lesson that wisdom and justice in policy are a stronger security than weight of armament?”

Hail to thee, orator of 1896! All hail to thee, Lord Russell of Killowen!

The lesson that you helped to teach is being rapidly learned. The story of “over-burthened industries, waste of human energy unprofitably employed, squandering of treasure which might have let light into many lives, and of homes made desolate,” has been told so often that the truth has penetrated even into the breasts of military chieftains, and from the Hague has come the first tangible promise of peace and gradual disarmament.

It took the nations by surprise that the initiative of the conference should have come from the Empire of Russia, but it should be recollected that the conference of 1864, at Geneva, that mitigated the horrors of war by recognizing the beneficent Red Cross Society, and the movement that forbade the use of explosive bullets, both had their origin with the Tsar. The youthful autocrat that issued the invitation of August 24th, 1898, was following closely in the steps of his ancestors.

The Rescript was transmitted by Ambassador Hitchcock to this Government with these words: “The high and humanitarian importance of this document cannot fail to recommend it to the absorbing interest of the President and people of the United States, and the fact that Russia is the first to take a step in the direction of a general disarmament and towards that universal peace which all Christian peoples must regard as the haven to which Christian progress ought to tend, places her in the very front rank of the civilized nations of the world.”

The Rescript set forth that “the maintenance of general peace and a possible reaction of the excessive armaments, which weigh down upon all nations, present themselves \* \* \* as the ideal towards which should tend the efforts of all governments.” Further, the Imperial Government urged “that the present time is very favorable for seeking through the

medium of international conference the most effective means of assuring to all nations the benefits of a real and lasting peace."

It set forth that "the ever increasing financial expense touches public prosperity at its very source; the intellectual and physical powers of the people, labor and capital are, in a great measure, turned aside from their natural functions and consumed unproductively." \* \* \* "To put an end to these increasing armaments, and to find means for avoiding the calamities which menace the entire world—that is the supreme duty which to-day lies upon all nations."

This admirable state paper closes: "This conference will be, with the help of God, a happy augury for the century which is now about to open."

Our Government accepted the invitation in the lofty spirit in which it was given. There was much of criticism and many evidences of suspicion of the motives of the Russian. The idea obtained with many that the scratching process would bring forth the Tartar.

Our Embassy to Russia, in a letter to the State Department dated November 9, 1898, commented upon this fact in very interesting fashion. I quote: "The general concensus of opinion among the members of the Diplomatic Corps, now present, appears to be that the proposition is visionary and utopian, if not partaking of Quixotism. Little of value is expected to result from the conference, and indeed every diplomatic officer seems to regard the proposition with that technical scepticism which great measures of reforms usually encounter."

January 11, 1899, there came to all the powers the second communication from the Russian Imperial Minister of Foreign Affairs speaking on behalf of his Royal Master. In it the tentative details of the proposed conference were given. The main purposes as stated in this most interesting paper were: "placing a limit upon the progressive increase of land and naval forces" and "preventing armed conflicts, by the pacific

means at the disposition of diplomacy." The themes for discussion were suggested to be:

1. The non-increase of war budgets and a reduction of effectives in armies and navies.
2. Interdiction of new fire arms and new explosives.
3. Prohibition of throwing explosives from balloons.
4. Interdiction of submarine torpedo boats and plungers, and building of war vessels with rams.
5. The adaptation of the provisions of the Geneva Conventions of 1864 and 1868 to naval warfare.
6. Revision of the laws and customs of war as elaborated by the Brussels Conference of 1874.
7. The acceptance of the principles of mediation and optional arbitration and the establishment of a uniform code of practice in their use.

I may be pardoned for this extended reference to these documents, believing as I do that they stand second in importance and in their influence on the future of mankind to none others of the century, unless we except the Declaration of Emancipation of our own Head Man of the Nation, Abraham Lincoln.

On May 18, 1899, the representatives from all the Powers met at The Hague in response to the invitation of the Tsar. Leading diplomatists and prominent jurists had in charge the interests of their governments. The United States was particularly fortunate in the selection made by President McKinley. The Honorable Andrew D. White, our Ambassador at Berlin, one time College President, scholarly author, legislator and Minister to Germany and Russia; the Honorable Stanford Newell, our Minister at The Hague, able lawyer, wise counsellor, broad citizen; the Honorable Seth Low, President of Columbia University, leading educator and once the chief executive officer of a great city; Captain Alfred T. Mahan, of the United States Navy, retired, naval strategist and historical scholar, who, after thirty years of active service in the navy, achieved fame by his works on "The Influence of the Sea Power upon History," and "The Life of Lord Nelson";



Captain William Crozier, of the United States Army, ordnance expert, instructor in mathematics, efficient officer; Mr. Frederick W. Hollis, secretary of the delegation, accomplished linguist, international lawyer. These formed the six representatives of the Great Republic who were to wield an influence more potent for results than any other delegation from a single nation. In the conference were the six great European powers, Russia, Germany, France, England, Austria-Hungary and Italy; the ten smaller states of Europe, Holland, Belgium, Denmark, Sweden and Norway, Switzerland, Spain, Portugal, Servia, Roumania and Turkey; four Asiatic nations, China, Japan, Persia and Siam, these, with the United States, making twenty-one in all.<sup>1</sup>

The instructions given by our government to its Commissioners presented a plan for a permanent tribunal of arbitration, and provided for the submission to it of all questions of disagreement, except such as relate to or involve political independence and territorial integrity. They were also to present a proposal regarding the immunity from seizure on the high seas, in time of war, of all private property, except contraband, unless the vessels containing such cargoes were attempting to enter blockaded ports.

Our commissioners might well, and it is presumed they did, challenge attention to the arbitrations entered into by their home country at every period of its history. Sixty-five treaties of arbitration successfully and in dignified and honorable fashion carried to a result avoiding war; many of them with powers on the American continent, but among them seventeen with Great Britain, seven with Spain, three with France and three with Portugal. Involving questions of magnitude usually settled by resort to arms, with England, the St. Croix River, the Lake of the Woods, the river St. Lawrence, the Bay of Fundy boundary questions, losses to

<sup>1</sup>NOTE.—Later advices from The Hague show that the following countries were also represented, making twenty-six in all: Greece, Luxemburg, Montenegro, Bulgaria and Mexico.

subjects for vessels and slaves captured and property destroyed, the Alabama claims, the Northeastern and Behring Sea Fisheries contentions.

Were an object lesson close at hand needed they could point to Paris, where now sits an august arbitral tribunal, presided over by the celebrated Russian statesman, Professor Martens, dividing his time between his duty at Paris and that at The Hague as a member of the Peace Conference, and of which High Court Chief Justice Fuller and Justice Brewer, of our own Supreme Court, and Lord Russell of Killowen, are members, trying the grave question of the Venezuela British-Guiana boundary, and before which ex-President Benjamin Harrison and ex-Secretary of the Navy, Benjamin F. Tracy, as leading counsel for Venezuela, are being heard.

The labors of the conference at The Hague are over. The differences that arose during the two months of deliberation have been reconciled. There remains now the action of the nations upon the work that has come from the suggestion of the Tsar. All was not gained that was desired, but unexpected and most gratifying success was had where it was least expected. While disarmament has not been definitely agreed to, the "conference considers that the limitation of military charges, which at present oppress the world, is greatly to be desired for the increase of the material and moral welfare of mankind." As Ambassador White has well expressed it, "it is quite natural that arbitration should be accepted in principle before disarmament, for which, in fact, it paves the way."

But the first great step has been taken. "The Convention for the Pacific Settlement of International Conflicts" has been adopted, and the American Bar Association can congratulate itself that it is to a very large extent the International Code of Arbitration prepared by it and issued to the world. The convention prepared for the signatory powers agrees to mediation and good offices by friendly powers. The mediators have the right to interpose their good offices at any time, even during the course of hostilities. Special mediation shall be had in

the event of serious dispute threatening peace, by each contending nation selecting a power, that those two may use all their efforts to settle the dispute, and in the event of an effective rupture of pacific relations that these powers may take advantage of every opportunity of restoring peace.

Where there are divergences of opinion regarding local circumstances which cannot be settled by diplomacy, the parties may have recourse to the "Institution of International Commissions of Inquiry," the members of which are to be selected by the disagreeing powers. The report of this commission leaves the contestants to an amicable arrangement or to have recourse to arbitration.

The convention then provides for International Arbitration, which it declares to be the "most efficacious and at the same time the most equitable means of settling disputes." The signatory powers agree to organize a Permanent Court of Arbitration, accessible at all times and working under a Code of Procedure which is inserted in the convention. An International Bureau is established at The Hague under the direction of a permanent secretary general. Each power shall appoint not more than four persons of recognized competence in international law. These persons thus nominated will be entered as members of the court, and are appointed for six years. From these members the powers having disputes may select the arbitrators in such number as they may agree upon. A permanent council of the diplomatic representatives at The Hague will be charged with the establishment of the International Bureau.

The convention then provides the Rules of Procedure. This code consists of many articles, and did time permit it would be interesting to review them. Suffice it to say that they are admirably adapted to the great work to be performed.

The criticism will be made by those who are impatient and would rush to results with a precipitation that would delay if not defeat the desirable ultimate, that this submission to an arbitral tribunal and obedience to its rulings is optional and

not compulsory. There need be no fear on this account. With this great court established, woe betide the State that would not, in cases not affecting its political integrity or its autonomy, appeal to it and abide the result. Public opinion, in this day of telegraphic swiftness, that binds the nations of the world together, making them, with the easy means of communication and supply interdependent upon each other and practically one great social system, where the disturbance of one is the confusion of all, is a mighty power. It lies back of kings and emperors, and will bring irresistible pressure to bear upon governments not to fight when they can save treasure wrung from their people and the shedding of blood by their sons, by recourse to a fair, deliberate and disinterested court of their own choosing.

Article 27 of the Arbitration Convention provides: "The signatory powers consider it their duty, in the event of an acute conflict threatening to break out between two or more of them, to remind these latter that the permanent court is open to them." It then provides that such reminder "and the advice tendered in the superior interests of peace to apply to the permanent court can only be considered as an offer of good offices." The American delegates, from what would seem to be an over-abundance of caution, took exceptions to this article, and insisted that the language be so modified that the United States may in no case be obliged to interfere in European affairs, or Europe in American disputes. Presumably this was because of the actual or supposed rights belonging to this Republic and to the Western continent under the Monroe doctrine. It is understood at our State Department that in signing the protocol our representatives succeeded in reserving our rights in this behalf.

In the matter of humanizing warfare but little was done except in the way of suggestions for future conferences. The throwing of explosives from balloons seems to have received interdiction, and the provisions of the Geneva Conference were recommended for adaptation to naval warfare. The inhibition

of new firearms and explosives, of submarine torpedo boats, plungers and rams upon war vessels hereafter constructed, like the non-increase of war budgets, reduction of effectives in armies and navies and the inviolability of private property on the high seas, which latter our representatives had near at heart, received no action at the hands of the conference, except the recommendation that all receive consideration in the future, although each and every proposition had strong and able advocacy. The United States and Great Britain declined to accept the prohibition of asphyxiating projectiles or expanding bullets.

With a permanent Court of Arbitration, even one to be optionally used, established by the action of the powers, these failures to act favorably are of but little account. In fact the more terrible and destructive warfare is made the less likely is its precipitation. M. Jules Simon, in 1894, writes: "It is horrible to think that one is journeying every day towards the universal war which will be the cataclysm of history"; and Lord Salisbury, in 1897, speaking of the ever-increasing competition of European nations in armaments, said this competition might end "in a terrible effort of mutual destruction, fatal to Christian civilization." All recognize it, the leaders and the led, and those who hold the power to declare the conflict of arms, viewing its horrible enginery, with its death-dealing power, will hesitate long before they "cry Havoc! and let slip the dogs of war."

Prominent observers abroad, viewing the high explosives, quick-firing guns, air ships and submarine boats that the inventive genius of man are daily perfecting, declare that war will soon become the impossible, because of the carnage that will be its necessary concomitant. M. de Block insists "that the conditions of modern warfare as to implements of destruction are too deadly to permit of war without mortality before undreamed of, and the disorganization of society, which would be occasioned by the mobilization for war, would produce results utterly destructive to the State." There is comfort then even

in that which has been left undone. Anticipated destruction may lead to prospective preservation.

Let us hope, with the English statesman from whom I have just quoted, "that the powers may gradually be brought together in a friendly spirit on all subjects of difference that may arise, until at last they shall be welded together in some international constitution, which shall give to the world, as the result of their great strength, a long spell of unfettered commerce, prosperous trade and continued peace."

#### FEDERAL AND STATE LEGISLATION.

The constitution of the Association requires that in the annual address of the President he "shall communicate the most noteworthy changes in statute law on points of general interest made in the several states and by Congress during the preceding year." What is worthy of note and what are the points of general interest, must, I take it, be left to the judgment of the General Council from each State and the President. While there should not be too much of detail, I deem it important that the communication should be an epitome of the changes made in statutory law and of new legislation, not local or special in its character. I have sought to be guided by that idea, and thank the General Council for the valuable aid and important suggestions made by them, frequently under very adverse and trying circumstances. Many of the legislatures held lengthy sessions, and the laws were not published until a late day. Thanks to the council, I have received and comment upon them all.

Many subjects mentioned are noteworthy, only as showing the trend of legislation at this time, and as indicating what in the future may be sought for or guarded against. As such they are worthy of grave thought, and in many instances of serious apprehension.

I doubt if in any twelve months since the foundation of our State governments has there been so much legislation. Forty-one of the States and Territories have held legislative sessions,

the only exceptions being Iowa, Kentucky, Louisiana, Maryland, Mississippi, Ohio and Virginia, whose general assemblies meet in even numbered years. In some of the States the session laws for 1899 fill over a thousand pages, and the average number of pages is much over five hundred. The quality is not sufficient warrant for the quantity, and if it be true that "the country is governed best which is governed least," then, indeed, most of the States are in a sorry plight. A critical examination of these laws will not only force the conclusion that we are governed too much, but the character of much of the legislation, with its socialistic tendency, its destruction of individuality, interference with personal liberty, encroachment upon property rights, making of the State not only a fostering father but a nursing mother, will affright every true lover of liberty. Many of the statutes will become dead letters, and fail of enforcement, thus adding to that disrespect for law that is one of the evils of the time. Fortunately not all are bad, and he who will look through the list of the session laws will find many that will command his approval.

#### UNITED STATES.

The Fifty-fifth National Congress has held three sessions. The first, or special session, was from March 10, 1897, to July 24, 1897; the second was from December 5, 1897, to July 8, 1898, and the third was from December 5, 1898, to March 4, 1899.

These lengthy sessions were not productive of much legislation that needs to be commented upon, and I confine myself to the third session.

*Inter arma silent leges*, and the war with Spain, and the supplemental suppression of armed resistance to the exercise by this Republic of the powers necessarily incident to the change of sovereignty in the Philippines, entailing a conflict more warlike than our contest with the European power, has caused almost a suppression of enactments important to the country in civil matters.

When our Association met in 1898, the peace protocol of August 12 had brought about a cessation of hostilities. Our government was most fortunate in the selection of the members of the Peace Commission. All but one were lawyers, distinguished in their profession. All brought to the deliberations of the commission signal ability, tried patriotism, earnest industry and determined tenacity. The result was the Treaty of Paris, that will stand in history as a monument of fair, open, generous treatment of a recumbent foe. The treaty was signed on the 10th day of December, 1898, was transmitted by the President early in January, and then began the lengthy debate in the Senate, which culminated on February 6, 1899, by its ratification. The gathering of the grain from the bloody fields of war has been had, but what the harvest may be is as yet an unsolved problem.

With the Philippine Islands in armed resistance to the exercise of powers legitimately ours, and the performance of duties irresistibly devolving upon us, the situation is intensified. Much dispute is there as to what are these powers and what these duties. Many of the arguments are more hysterical than logical, and are based upon theories utterly subversive of the fundamental principles of the law of nations, and practically destructive of the war-making power.

Our Supreme Court, in 1833, recognized "the settled principle in the law and usage of nations, that the inhabitants of a conquered territory change their allegiance and their relations to their former sovereign is dissolved." (7 Peters, 51). Frequently, thereafter, and particularly in 1857, after the conquest of New Mexico, it insisted upon the same rule, holding to the right of military occupation and "through and by that means ordaining a provisional or temporary government for the acquired territory."

"Amongst the consequences which would be necessarily incident to the change of sovereignty would be the appointment or control of the agents by whom, and the modes in which, the government of the occupant should be administered—this re-



sult being indispensable in order to secure those objects for which such a government is usually established." (20 Howard, 176.)

Our government has proceeded upon these lines of a principle recognized and acquiesced in by all civilized powers. The President has issued his orders based upon this law. While insisting that since the cession from Spain our "powers as military occupant are absolute and supreme," he guarantees the protection of private rights of persons and property, the administration of justice under the organized courts and the freedom of the people to pursue their accustomed occupations.

The collection and administration of revenue, the care of public and private property, the restoration of commerce, the movement of trade in its accustomed channels, are all provided for, and standing in the way of an orderly, beneficent "provisional or temporary government," are insurrectionists in arms, revolutionists in battle array, encouraged in their rebellion by political theorists who would, if they could, adopt a policy not only Utopian but emasculating; one that would make the great Republic a weakling, to be flouted at and scorned by the powers.

The plain duty that devolves upon this country is to suppress this revolt; with firm, strong hand put down this insurrection, and when our sovereignty is acknowledged, and our supremacy made manifest, with kindly guidance and generous aid lead these people of the Asiatic seas to self-government, and insure to them "domestic tranquility, provide for their common defence, promote their general welfare and secure the blessings of liberty to them and to their posterity," as provided in the Constitution of the United States. If a separate autonomy can be safely had for these islands, and I sincerely hope it may be, we can surely trust the Congress that it will be granted. If, with Hawaii and Porto Rico, they are to become dependencies, colonies or territorial possessions, we can safely rest upon the wisdom of a people that, in the past, has wrestled with far more difficult problems, taken with safety territory

more vast and, under then existing conditions, more remote, assimilated populations most distinctively foreign, rid itself of the fearful incubus of domestic slavery and quelling an insurrection greater than any that history records, restored a dismembered Union, and rejoined disunited States with a bond of cement so strong that the paradox came that disunion meant a more perfect union and secession meant accession.

In Cuba we are pledged to the restoration of complete tranquility and the inauguration of a stable home government. The impositions and horrors of Spanish rule will, under the guiding care of this country, be replaced by a just and humane government, created by the people of that fair Island of the Antilles. If she shall come to us in the future, it will be of her own volition and on such terms as a treaty of annexation may impose.

The questions that arise as to all these possessions, whether they are a present fact or in expectancy, are those of law rather than politics. The lawyer, not the politician, must write the compact that shall unite these distant parts. There will be work enough for our Association, even if it should confine itself to the elucidation of the knotty problems that the expansion, that has already expanded, has brought to us.

#### CONGRESS.

Aside from the legislation that was a necessary incident of the war and the increase and maintenance of the army and navy, the Federal law-making power did not enact many laws that are of prime importance. In fact, the sessions were more to be criticised for that which was not done rather than for what was accomplished.

The act introduced, on the suggestion of our Association, providing for an amendment of the Act of March 3, 1891, establishing the Circuit Courts of Appeal, as to section 6, by conferring on those tribunals "appellate jurisdiction to hear and determine an appeal or writ of error from interlocutory orders and decrees, appointing or refusing to appoint receivers,

or vacating or refusing to vacate such an order or decree, or allowing or refusing to allow injunctions, notwithstanding an appeal in such cases upon final decree would under the statutes regulating such cases, go direct to the Supreme Court of the United States," and as to section 7, to provide an appeal not only where an injunction has been granted or continued, but also where it has been refused or dissolved and also where an application for the appointment of a receiver, or for the vacation of such appointment, shall be either granted or refused, and "that the Court below may, in its discretion, require as a condition of the appeal an additional bond," still fails of becoming a law. The abundant reasons for this beneficial legislation have heretofore been set forth, and the Honorable William Wirt Howe, in his admirable address to the Association one year ago, presented further argument of most convincing quality why this amendment should be enacted. The reasons for it were so obvious that he was fully warranted in the prediction that it would probably pass, but it died in the hands of the Judiciary Committees. We can simply express the hope that resurrection may come to it, and that Congress may afford the relief so sorely needed.

The following laws were enacted :

ALASKA.—A Crimes Act for the District of Alaska was passed, providing for a code of Criminal Procedure. Appeals and writs of error in criminal actions may be taken from the District Court either to the Supreme Court or the Circuit Court of Appeals for the Ninth Circuit.

CENSUS.—A Census Bureau for taking the twelfth and subsequent censuses is established in the Department of the Interior.

COURTS.—The third, fifth and sixth Judicial Circuits have each received an additional judge.

DEPARTMENT OF JUSTICE.—Is to have a new building for its accommodation.

ELECTIONS.—The law providing for written or printed ballots for Representatives in Congress has been amended to permit the use of voting machines.

EXPOSITIONS.—The government is to take part in and encourage the following expositions :

National Exposition at Philadelphia ; celebration of establishment of seat of government in the District of Columbia ; Pan American Exposition at Buffalo ; Ohio and Northwest Territory Exposition at Toledo.

LEPROSY is to be investigated and reported upon by the Marine Hospital service.

PENSIONS.—When a pensioner deserts his wife, or children, permanently helpless or disabled or under sixteen years of age, one half of his pension shall be paid to such wife or child. If he enters a State or National Soldiers' Home, like action shall be had. No pension shall be granted to widows who marry soldiers or sailors after the passage of the act, except as to those who served in the Spanish war.

POST OFFICE.—Letters printed in the raised characters, used by the blind, go through the mails as third class matter.

RAILROADS.—A general law, granting right of way through Indian Reservations, has passed.

SUITS against Federal officers shall not abate by reason of death, resignation or removal from office.

#### DISTRICT OF COLUMBIA.

Congress has passed several laws applicable to the District of Columbia only, and among them these :

LABOR.—Contractors on public buildings are to give bond for payment of wages.

LIQUOR shall not be sold on Sunday.

NEGOTIABLE INSTRUMENTS.—The law recommended by the Association has passed.

SEDUCTION seems to be confined to unmarried women of chaste character, between the ages of sixteen and twenty-one.

TITLES to lands in the District may be quieted, and where title has vested by adverse possession, the holder may sue to have his title perfected.

## LEGISLATION OF STATES AND TERRITORIES.

A fact to be noted is the growing uniformity of statute laws. This, in some instances, flows from special effort made by interests that are to be benefited in manufacture or trade. In others from efforts made by associations akin to our own; but in most cases it is because of a common interest and the ease with which thought, expressed in the public press or by enactment in one section, spreads the country over. Although divided by State lines, we are one great nation with one destiny, and now, happily, so united that the laws governing moral action, business management and corporate control can well be the same in all the Commonwealths.

By the last report of the Committee on Uniform State Laws, it will be seen that "A General Act relating to Negotiable Instruments," recommended and strongly urged by our Association, had been adopted by New York, Connecticut, Florida, Colorado, Maryland, Virginia and Massachusetts. I am pleased to add to the list the States of North Carolina, North Dakota, Oregon, Rhode Island, Tennessee, Utah, Washington, Wisconsin and the District of Columbia.

We bid fair to become a government by boards, bureaus and commissions, if their increase, so marked for some time past, and particularly in the last year, is to continue. A horde of officeholders, usually serving for a salary, but sometimes paid by fees, has been called into being to examine, inspect, license and regulate. With physicians, milk vendors, dentists, barbers and embalmers undergoing examinations and receiving diplomas before they can come in contact with us, it would seem as though we are safely guarded from the cradle to the grave. The cost is great, for these boards and officers with their deputies, office force and necessary assistants, running into many thousands the country over, require an immense sum for their maintenance. The additional patronage given to the Governors of States and Mayors of cities is large, and some might see in that great increase of chances to reward for political favor, some lurking element of danger. But the

compensation for cost and danger is that our corpus is to be scientifically cared for in life and our corpses artistically preserved in death. I am glad to report one instance of economy in our much inspection. In Missouri the office of Inspector of Watermelons, created in 1895, in each county in the State, has been abolished. But I regret to report that in the same State a Beer Inspector has been created to examine that alleged non-intoxicating beverage and pronounce, after appropriate trial, upon its merits.

Boards of Health, Agriculture, Horticulture, Assessment, Equalization, Public Lands, Railroad Commissions, Warehouse Commissions and many others have existed in different States for years, but the additions within the last twelve months are remarkable. Boards to examine and license barbers are created in Michigan, Oregon and Nebraska; for peddlers of milk in Minnesota, North Dakota and Washington; for physicians and pharmacists in about all the States; for dentists, plumbers, electricians and engineers in many of them; for horseshoers in Minnesota, New York, Colorado, Illinois, Maryland, Michigan and Washington; for veterinarians in California, Illinois and Michigan, and for embalmers in New Hampshire, Nebraska, West Virginia and South Dakota. Boards of Arbitration already exist in many States, and Idaho and Indiana are now to be added. Boards with different names in different places inspect dairy and food products, including concentrated feed for domestic animals. Boards for protection of forests, game and fish exist nearly everywhere. Horticultural Boards are to inspect orchards and nursery stock in California, Idaho, Illinois, Massachusetts, Michigan, Minnesota, Georgia, Missouri, Montana, Pennsylvania, Utah and Wisconsin, and are charged in some of the States with the duty of destruction of orchards and nursery stock, without compensation to the owner, when they are incurably diseased or have destructive insects not to be eradicated. Immigration boards, mining boards and boards to select uniform textbooks in schools have been created in many States.

Briefly stated, the following seem to be favorite subjects for legislation, and greater detail will be found in the subjoined list of States.

Bicycle paths are established and protected.

Official bonds and legal undertakings may be executed by surety companies.

The selling of process or renovated butter is regulated.

Civil service rules have been provided in cities in California, Montana, New Jersey, Michigan and in Pennsylvania for firemen and policemen. The system in New York has been strengthened by amendments.

Dogs are made personal property in Indiana, Nebraska and Oklahoma.

The election laws in many States have been amended in the effort to purify elections, and great safeguards have been thrown about conventions, caucuses and primary elections in some of the States. Voting machines are authorized.

In Oregon and South Dakota the initiative and referendum system of enacting laws by appropriate amendments to their constitutions is contemplated, and such right in the enactment of ordinances is given to certain cities in California, Indiana, Michigan and South Carolina. Attention is particularly called to the new charter of San Francisco, which has much that is novel and interesting.

Labor laws, looking to the safety of those who labor in mines, factories and mercantile houses, have been enacted in about all the States, and labor organizations are fostered by many enactments. In Kansas, the labor organizations assembled in delegate convention, elect the State factory inspector, and the Miners' Labor Union elect the State mine inspector. The law providing that eight hours shall constitute a day's labor on public works has passed in many States. An interesting result of attempting to enforce the eight hour law in private employment will be found referred to under the laws and decisions of Colorado. Laborers are required to be paid at stated intervals in money; store checks and orders are for-

bidden. In New York no material shall be used in public work unless the wages paid the laborers who produced it, no matter where, are paid an equal amount to those paid for similar service in New York.

Free, or public libraries, have received every possible encouragement, and what are called "Traveling Libraries" are much in vogue.

Live stock is protected from theft in many States in the West by providing inspection and license to remove before shipment from the State, and requiring those slaughtering cattle to register and report the brands on the stock and the names and addresses of those selling the animals.

All lovers of law and order must view with satisfaction the laws punishing lynching with great severity which have passed in Indiana and Michigan. By these laws it is defined to be the act of violence committed by a mob assembled for some unlawful purpose. A "mob" is defined to be any collection of persons pretending to exercise correctional authority over other persons by violence and without authority of law. If death results, those participating, aiding or abetting shall suffer death, or imprisonment for life, and those present, but not participating, shall be imprisoned not less than one nor more than twenty-one years. Officers suffering prisoners to be taken by mobs shall be impeached, fined and imprisoned.

Pensions both for disability and length of service are allowed to firemen and policemen and their families in certain cities in Indiana, Michigan, California and Montana.

Roads are receiving protective legislation, and wide-tire wagons are encouraged in Connecticut, North Carolina, New Hampshire and Oregon.

Many laws have passed in regard to schools, looking to uniformity of text-books, compulsory attendance and punishment for truancy.

No one matter has been given more extended thought and action at the hands of the law makers than taxation, looking to greater fairness in assessment and collection. About every



form of business or occupation has imposed upon it a license tax in Alabama, Georgia and North Carolina, and in Michigan, Missouri and Wisconsin legacies are heavily taxed to those who are not direct heirs or relatives. In North Carolina all income derived from property not already taxed, and from salaries over \$1,000 per annum, are taxed.

Department stores are receiving attention and a disposition is evidenced to interfere with their spreading tendencies in the State of Missouri. Business in cities over 50,000 inhabitants is classified into seventy-three different classes, embodying about everything which is the subject of trade or barter. These classes are then divided arbitrarily into groups or grades. It is made unlawful to expose or offer for sale, in the same establishment, under a unit of management, goods at retail of more than one of the groups or grades without a license of from \$300 to \$500 per annum for each; two-thirds of the license tax to go to the city and one-third to the State. The Governor appoints in each city a License Commissioner who shall receive applications and issue licenses. For one establishment to deal in many classes would mean an amount to be paid for licenses that would be prohibitory. The taxation imposed by the law is a practical recognition of the truth of the statement—"the power to tax is the power to destroy." Did the lawmakers desire precedent for the attempted destruction of department stores they could have found absolute prohibition of the carrying on of more than one business, under heavy penalties, among the discarded rubbish of the English law, in statutes of the olden time, when the might of kings controlled the right of subjects. In the Act of 37 Edward III, passed in 1350, we read: "Item, for the great mischiefs which have happened as well to the King as to the great men and commons, of that, that the merchants, called grocers, do ingross all manner of merchandise vendible; and do suddenly enhance the price of such merchandise within the realm, \* \* \* hath ordained that no English merchants shall use no ware nor merchandise, by him nor by other, nor by no

manner of covin, one only one, which he shall choose betwixt this and the feast of Candlemas next coming. And such as have other wares or merchandise in their hands than those that they have chosen, may set them to sale before the feast of the Nativity of St. John next ensuing. And if any do to the contrary of this ordinance in any point, and be thereof attainted, in the manner as hereafter followeth, he shall forfeit against the King the merchandise which he hath so used against this ordinance; and, moreover, shall make a fine to the King \* \* \* and whosoever will sue for the King in such case, shall be thereto received, and shall have the fourth penny of the forfeiture of him that so shall be attainted at his suit." But five hundred and fifty years ago, when this law came into being, there were no invidious distinctions. The artisan or skilled laborer had no superior right to the tradesman, for we read in the same Act of 37 Edward III, "Item, it is ordained, that artificers, handicraft people, hold them every one to one mystery, which he shall choose betwixt this and the said feast of Candlemas," and those who did not so choose and work at the "one mystery" were punished by imprisonment for half a year and fine and ransom. It is unnecessary to state in this presence that long ages ago these impositions upon personal liberty were consigned, with many others of like import, to the dust-heap.

Railroads are always the recipients of legislative courtesies, and cannot complain of any lack of attention at the hands of the law-makers. The Railroad Commissioners in many States have enlarged powers. The effort at governmental regulation that looks towards absolute control and the conflict between rights that are intra-state and those that are inter-state, continues, and will do so until the Federal Supreme Court definitely, and with exactitude, decides the rules that will control the power of direction and guidance by the State authorities on the one hand and the Federal Commission and tribunals on the other. It is to be hoped that the court of last resort will soon settle the important question of what is the basis

upon which a reasonable rate shall rest. The most surprising piece of railroad legislation is to be found in the Session Laws of Kansas, where the Court of Visitation is created, upon which devolves the powers that formerly vested in the Board of Railroad Commissioners, which is abolished. I beg to refer the seeker for novelties to the comments upon this choice piece of legislative bric-a-brac to be found under the sub-head "Courts" in Kansas.

The constitutionality of the Federal tax of ten per cent. on the circulation of State banks is to be tested under the provisions of a very interesting piece of legislation in Georgia. The Governor, State Treasurer and Comptroller-General are made a commission to create and issue State Bank notes, to be furnished to State Banks under safeguards, protecting their redemption. If the United States government shall attempt to collect the tax of ten per cent., provided by the Federal statute, the Attorney-General is required to test its constitutionality. Of course, this tax, imposed under the pretense of revenue, was one that was prohibitory. Those of us who recall the variegated currency of "before the war," that seemed to have its surest foundation upon the Counterfeit Detector, will watch this experiment with interest.

The problems, legal and political, that are the most absorbingly important and likely to lead to far-reaching results in law-making and statute construction are those incident to so-called trusts, pools and combinations in manufacture, commerce and trade. The legislative difficulty seems to be to draw the line that should divide the objectionable trust or monopoly, that defies the natural laws of trade, from the desirable corporation or the concentration of capital productive of good results. To strike down the one and not cripple the other is no easy task for the law-maker. Concentration is the order of the day. Industries of importance and enterprises of magnitude can only be carried on with success by bringing together that aggregation of capital and limitation of personal liability permissible in the creation called a corporation. This

artificial person has accomplished, in the gathering of the raw materials from the storehouses of nature; the making from them in shop, mill and factory, articles of use or ornament; the gathering of them in mart, store and warehouse, to vend to the consumer and the distribution of them by the numerous channels on water and land—more of substantial advantage to mankind than any other instrumentality. The century now closing has seen, during its hundred years, an advance on all lines of production, with corresponding benefit to the consumer, such as has been afforded at no other period in the world's history. Corporations that have for their purpose a bettering of methods of manufacture, sale or distribution; the cheapening of the making of the article produced; the improvement in the style or convenience of the finished product; the economy in its vending or transportation, are a great good to mankind, and in them, legally conducted, there is naught of evil to our race. No more disastrous calamity could befall this Republic, that largely by such concentration of capital, with the safeguards thrown about the investment, has kept for itself its own splendid market and is now capturing the markets of the world, than a blow administered, either by statute or decision, destructive of those corporate interests that are honestly capitalized, fairly based and legitimately managed.

Viewing the work of the law makers and the courts, one cannot but feel some alarm at the drift of both, while realizing that the action of many of the corporate creatures made by the law are such as to demand as to them that a halt should be called and their aggressive advances cease, even if their destruction must be ordained to stop them in their career. The fear is that we may go to extremes, and that in wiping out the iniquitous trust we may destroy the legitimate corporation. The public mind is excited by the yellow-tinged articles of a partisan press and the loud mouthings of blatant politicians, seeking simply party advantage and the keeping of power or the gaining of patronage to be dispensed. In platforms par-

ties will vie with each other in denunciation of trusts and combinations, and with meaningless phrases, "full of sound and fury," seek to capture the votes of the groundlings. The evils that exist cannot thus be remedied. Laws framed in haste, that are designed to obtain political advantage, or are based upon popular outcry, or unreasoning prejudice, come usually to plague or torment their inventors. Adam Smith is right in saying that "the occasions on which a government can help or intervene are—a certain well defined province of action excepted—exceedingly rare, and ought to be looked on with the gravest suspicion, and permitted with the greatest hesitation."

That evils exist that need legislative correction cannot be gainsaid. Over or fictitious capitalization, monopolistic tendencies, leading to the destruction of fair competition, the decrease of producing cost, with advance of the price to the consumer, are wrongs demanding a remedy; but the correction cannot be safely applied when unreasoning denunciations, furious hostility and desire for partisan gain rule the legislative mind, and truckling to popular outcry sways the judicial decision.

Nearly all the States have what are termed anti-trust laws, and in them the term trust has received much enlarged definition. We recall when the term signified an organization by which the control of several corporations was vested, by transfer of stock or otherwise, in a central committee or board of trustees, who controlled or suspended the work of any of the corporations at pleasure, and could thus regulate production and defeat competition, thus controlling the prices of the necessities or conveniences of life. This surrendering of the powers of a corporation, by its own act, to the control of a trust was an act of legal *hari kari*, and afforded ground for a forfeiture of its charter by the State. This penalty being invoked, many corporations seeking results not to be permitted, by way of trusts, formed new corporations of great magnitude, that swallowed the smaller, which became extinct. It is estimated that over five hundred of these organizations have been formed

that have taken over the stock of many corporations, in all lines of industry, with a capitalization of billions of dollars, represented by preferred and common stock. It is believed that the preferred stock represents more in value than the property purchased, and that the common stock usually has no real basis of value. Those who sell their plants or stock to these enterprises, the glib-tongued promoters who launch the scheme and the persuasive bankers who float the stock of the over-capitalized venture, are the ones who reap the golden harvest, while the gullible ones of the public who invest in the stock are the losers.

In 1890 Congress declared every contract or combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce, among the several States or with foreign nations, illegal. We recall, and I need not comment upon, the broad and sweeping construction given to this law by the Supreme Court, by which a contract fixing rates or prices by one common authority for all the contracting parties, and which thereby prevents competition between the contracting parties, there being no interference with any lawful right of any other party, was a violation of the Federal law and a crime. The States have made their laws more explicit than the act of Congress. Nearly all have some form of law punishing trusts, pools or combinations, and during the last year the States of Arkansas, Indiana, Kansas, Michigan, Missouri, New York, North Carolina and Texas have by amendments made their laws more sweeping in terms and more severe in penalties. The State of Arkansas, under heavy penalty and forfeiture of charter, forbids any combination to regulate or maintain the price of any article of manufacture, merchandise, commodity or any article or thing whatsoever, or the price or premium for insurance. In Michigan trusts are declared to be combinations of capital, skill or arts to restrict trade or commerce; to limit or reduce the production or increase or reduce the price of merchandise or commodities; to prevent competition in manufacturing, transportation, purchase or sale; to fix any standard

by which any price to the public shall be controlled or established; to carry out any contract regarding price of commodities, produce or transportation or to pool any interest connected with the sale or transportation of articles that the price thereof may be affected. Texas has greatly strengthened her law, and has added to the penalties the inability of the combination to collect for any article sold or enforce any contract made.

Missouri has afforded more legislation upon this important question, and her courts have adjudicated anti-trusts statutes to a most interesting extent, and I beg to refer to my comments thereon in the subjoined statement in detail of the noteworthy changes made in statute laws of States, the reading of which in full I do not propose to inflict upon you. I read only that which will be found under the word "Trusts" in Missouri.

In considering the course of State legislation on the subject of combinations, one cannot but be struck with some inconsistencies that can only be explained by the necessities of politics. When it is considered that labor cost is the very large percentage of everything that is made and sold, it seems strange there should be no inhibition upon organizations that exercise a complete and monopolistic control of about all the important trades, and exist to maintain the price of wages or to increase them. We read no enactment and hear no denunciation of combinations that, by most drastic methods, frequently bringing widespread ruin in their train, add largely to the cost of both the conveniences and necessities of life. Statutes afford many strange contrast, but none more remarkable than this—that combinations may exist and be fostered to advance to the consumer the cost of labor, but organizations to advance the price of the finished article are to be punished with severity. The reconciling of these inconsistencies and the attempted enforcement of the State laws solving these most absorbing problems will be watched with intense interest. The earnest hope of every patriot will be that those who write the law, those who construe its meaning, and those who enforce it, will be guided

by the light that will come from calm, deliberate investigation, and not be swayed by the catch phrases of the political demagogue.

And now, gentlemen, of the American Bar Association, thanking you most heartily for the attention you have given to an address that has taxed your patience, I fear, to its utmost limit, we will proceed to the consideration of the important matters that call us in session, seeking to do our part to "promote the administration of justice, uphold the honor of the profession of the law," that all may bask in "the gladsome light of jurisprudence."

#### ALABAMA.

**ABSTRACTS OF TITLE.**—Making or certifying false abstracts is made a misdemeanor.

**ATTORNEYS.**—Courts are required to find applicants for admission to the bar to be of good moral character before examination.

The Code of Ethics adopted by the Alabama Bar Association shall be published in the next volume of reports.

**CORPORATIONS.**—Equity Courts may order the sale of franchises of *quasi* public corporations.

**ELECTIONS.**—Primary elections are guarded and frauds thereat punished.

**GAME** laws of stringent character have been enacted, and song birds are protected.

**HEALTH.**—A full system of quarantine is established.

**LABOR.**—When receivers of corporations are appointed, labor wages shall be preferred claims.

**LIQUORS.**—A dispensary law for the sale of liquor has passed. Thirty-three counties out of sixty-six to maintain them.

**RAILROADS** may sell their property and franchises.

Detaching or uncoupling trains, pulling bell cords or emergency valves; obstructing tracks; interfering with switches or signals without authority; stealing a ride or discharging firearms from trains, are all made misdemeanors.



**REAL ESTATE.**—The wife being adjudged insane, the husband may alone convey real estate.

**TAX.**—A license tax on nearly all occupations has been provided for.

Cotton and other agricultural products and pig-iron are exempt from taxation in the hands of producers or purchasers for prompt shipment.

#### ARIZONA.

**BEES.**—The office of "Foul Brood Inspector" is created with power to inspect apiaries and destroy those infected.

**CONSENT.**—Age of consent has been raised from fourteen to seventeen years.

**EMINENT DOMAIN** may be exercised by pipe line companies.

**EXEMPTION** to heads of families reduced from \$1,000 to \$500 personal property, and homesteads from \$4,000 to \$2,500.

**FLAG.**—It is made a misdemeanor to deface or show disrespect to the national flag.

**IMMIGRATION.**—State board is abolished and County boards substituted.

**INSURANCE.**—Foreign companies are to pay a tax of two per cent. upon all premiums received.

**LAWS.**—A commission for the revision of the laws is created.

**LIBRARIES.**—Cities over 5,000 people may tax for free libraries.

**RAILROADS** may change their line where it does not increase distance or change terminal points, without forfeiture of franchise rights or privileges.

**REAL ESTATE.**—Property acquired by either husband or wife during marriage is declared common property, and can only be alienated by both joining in the deed.

**SCHOOLS.**—Compulsory education is required.

**STATEHOOD.**—The Territory of Arizona prays for admission to the Union, and sets forth its thirty-five years of "Territorial Vassalage."

**TAXATION.**—Railroads commenced within one year and constructed at the rate of twenty-five miles each year are exempt from taxation for ten years, and when canals and reservoirs for distribution of water for mining, manufacturing and agricultural purposes shall be commenced within one year, they shall be exempt for fifteen years.

**TRADE MARKS AND LABELS** are protected from counterfeiting or imitation.

#### ARKANSAS.

**CONSTITUTIONAL AMENDMENTS.**—The people in 1900 vote upon an amendment authorizing surety companies to be taken on official bonds.

**AGRICULTURE.**—Live stock shall only be sold by a written bill of sale and when shipped, a register of the shipper and description of the animals shall be kept.

Strict quarantine regulations are provided.

**ATTORNEYS** may sue both plaintiff and defendant for contingent fees, when action is compromised.

**CITIES** and towns are prohibited from prescribing for similar offenses less penalties than those imposed by the State and such proceedings are pleadable in bar.

The business of premium stamps may be licensed to the extent of \$1000 per annum to the intermediary and \$500 to the merchant aiding or patronizing him.

**CORPORATIONS.**—Foreign, must maintain a resident agent to do business in the State.

**EVIDENCE.**—Physicians and trained nurses cannot be compelled to testify as to information acquired from a patient.

**HEALTH.**—Cigarettes must not be sold or given to any person under twenty-one years of age, nor tobacco to a minor under fifteen.

**HUSBAND** shall not be held liable for antenuptial debts of wife, and may sue within two years for damages for loss of services and companionship when wife is killed.

LABOR.—Mills and factories must pay employes in currency, and for advance payments must not discount more than ten per cent. per annum.

Coal must be weighed before screening as the basis for miners' pay.

LIQUORS.—Judicial officers may issue search warrants for liquors in prohibited districts, and they shall be destroyed when found.

RAILROADS.—A Railroad Commission is established with power to fix rates and maintain control and supervision over railroads.

REAL ESTATE.—Seven years' payment of taxes, under color of title, on unimproved and unenclosed lands make title and parties may have the same confirmed by decree of Court.

SCHOOLS.—Physiology and hygiene must be taught with special reference to the effect of alcohol upon the human system.

SEDUCTION.—Marriage following seduction does not terminate prosecution, which shall be renewed if party abandons wife, who may be a witness against her husband.

TRUSTS, pools, combinations and confederations to regulate or fix the price of any article of manufacture, merchandise, commodity, or any article or thing whatsoever, or price or premium for insurance, or to maintain such prices are prohibited, and corporations, partnerships or individuals entering therein are guilty of conspiracy to defraud and shall forfeit from \$200 to \$5,000 for each day's offense, with forfeiture of charter if a corporation.

Corporations shall file each year an affidavit of some principal officer that it has not entered into such combination. The Attorney General and Prosecuting Attorney are charged with the enforcement of the Act and are to receive one-fourth of the fines inflicted. An appropriation of \$5,000 is made to retain counsel to assist the Attorney General and prosecutions are given precedence in the Courts.

## CALIFORNIA.

CONSTITUTIONAL AMENDMENTS are to be submitted reducing the Supreme Court from seven to five Judges, providing three Courts of Appeal and defining the jurisdiction of such courts; giving the Legislature power to control primary elections; excepting Stanford University and Lick School, church property and State, County and District bonds from taxation, and providing stenographers for the Superior Courts.

BADGES.—Fraudulent use of secret society badges is a misdemeanor.

CITIES.—Much legislation was had in regard to the charters of municipalities. The provisions of the charter of San Francisco are very thorough and advanced and will be watched with much interest by all those who are interested in municipal reform. Prominent among them are the following:

The legislative power is lodged in eighteen supervisors elected at large. The Mayor presides and has the power of veto, but such veto may be overridden by fourteen votes. If fifteen per cent. of the voters petition for a particular ordinance to be voted upon, it must be submitted and if a majority of votes favor it, it becomes a law at once. Every ordinance granting a franchise or for the lease or sale of any public utility must be submitted to a vote. The City charter is amendable by vote of the people. No street-railroad franchises shall be granted for more than twenty-five years and must be advertised and bid for. No bid shall be received for less than three per cent. of the gross receipts for the first five years. The City retains the right to regulate fares. The Mayor is elected for two years and has exceptional powers. He appoints the Board of Public Works and the Board of Education. The powers and duties of these boards are most carefully guarded. Police Commissioners are appointed by the Mayor. The Police force is to be pensioned for old age and disability from a relief fund, and a similar fund cares for firemen. Most stringent civil service rules are in force. It is declared to be

the purpose of the City to acquire and ultimately own all its public utilities and the charter points out the steps to be taken to acquire such ownership. There is much else of interest in this new departure and effort at municipal reform.

**CORPORATIONS.**—Foreign, must maintain resident agent.

**DAIRY PRODUCTS.**—Sale of impure dairy products is made unlawful, and renovated butter must be marked.

**ELECTIONS.**—Laws governing primary elections passed in 1895 and 1897 were declared unconstitutional by the Supreme Court. The legislature of 1899 submitted a constitutional amendment giving power to enact laws governing primary elections and conventions. A law has passed providing that such elections shall be held in accordance with the statute governing general elections, and at the public expense. The Australian ballot system obtains except that pasters may be used at primaries.

**FLAG.**—Its desecration is prohibited.

**HORTICULTURE.**—Orchards and vineyards and all imported stock are to be inspected by the State Horticultural Quarantine Officer.

**LABOR.**—Eight hours shall be a day's labor on public works.

**LIBEL.**—It is unlawful to publish, without consent of party, the portrait of any living person except those holding office or convicted of crime.

A fine is imposed for publishing an article blackening the memory of the dead, or impeaching the honesty, integrity, virtue or reputation of the living, or calling attention to their natural or alleged defects, unless the name of the author is attached to the matter printed.

**LIVE STOCK.**—A State Veterinarian is to be appointed to inspect live stock and establish quarantine.

**PUBLIC WORKS.**—A Commissioner of Public Works is created to examine overflow lands and regulate such overflow.

**SUPREME COURT.**—The five Supreme Court Commissioners are continued for ten years.

**TRADE MARKS** are protected.

## COLORADO.

CONSTITUTIONAL AMENDMENT will be voted upon in 1900 changing the method of adopting amendments to the Constitution.

AGRICULTURE.—For irrigating and domestic purposes a large amount has been appropriated to sink artesian wells.

BICYCLES.—The State is to build a State bicycle path between points named in the Act.

DEBTORS.—A release by a creditor of one of two or more joint debtors does not affect the liability of the remainder.

EXEMPTIONS.—Bicycles and sewing machines are made exempt.

GAME AND FISH.—A State Game and Fish Commission is to be appointed with extraordinary powers. The provisions of the law are most drastic. License or consent must be obtained to keep wild animals or fish in private parks, or to import, store or transport the same.

INSURANCE.—Premiums must be paid to a resident agent, that the State may receive its tax thereon.

JURY.—Three-fourths of the jury may render verdicts in all civil causes.

LABOR.—A law was passed March 16, 1899, making it an offense for employers to permit employes in smelters and underground mines or workings to work over eight hours a day, and punishing both employers and employed for violation of the law. The demand for the former pay for the lessened hours of work caused a wide-spread and formidable strike that for a time paralyzed all the principal industries. The Supreme Court has decided the law unconstitutional as not being a legitimate exercise of the police power of the State. All wages are to be paid in money, and store or "truck" orders are prohibited. Contracts to trade at any particular place are void. A very liberal mechanics' lien law has been enacted.

LIBRARIES.—A State Board of Library Commissioners is created. Cities may levy a tax for public libraries.

**LIVE STOCK.**—Inferior male stock is not allowed to run at large. Cows on public ranges must be furnished with one male animal to every twenty-five head, and such males must not be of Texan, Mexican, Cherokee or Jersey blood and must be of one-half blood or high grade. The penalties for disobedience are most severe, not only upon the head of the owner but upon the inferior male animal as well. Cattle and horses must be inspected before shipment. Docking of horses tails is prohibited, and no horse thus treated shall be brought into the State under penalty of heavy fine or imprisonment.

**OIL.**—An Oil Inspector is to be appointed with large powers.

**PAROLE** of prisoners is permitted after serving the minimum term fixed by the Court, which also fixes the maximum.

**ROADS.**—The State is building roads by direct appropriation of large amounts.

**SCHOOLS.**—Compulsory education is required.

**TRADE MARKS** are protected.

#### CONNECTICUT.

**CONSTITUTIONAL AMENDMENTS** are proposed providing that a plurality of votes shall elect State officers and fixing the minimum and maximum number of State Senators.

**AGRICULTURE.**—Packages containing concentrated commercial feed stuffs must be labelled as to quantity and quality.

**BANKS.**—Savings Banks are given large discretion as to investment of funds.

**BONDS.**—Surety companies must be given upon the bonds of receiving and disbursing officers, and bonds and recognizances may be given by such companies.

**CHILDREN.**—Temporary homes must be constructed for neglected or abused children who are a public charge.

**CITIES.**—The police power of cities is largely and specifically increased.

**CORPORATIONS.**—The manner of filling vacancies in offices and of transfer of stock is provided for.

Charter fees of fifty cents per one thousand dollars of stock, up to five million dollars, and ten cents for each additional thousand must be paid.

CRIMES.—It is made criminal to conceal property conditionally sold, or property about to be attached.

Giving or selling transfer tickets on public conveyances to other than passengers entitled thereto is prohibited.

DIVORCES petitioned for to the General Assembly must receive attention from the Attorney General.

In divorce proceedings the Court may direct notice to non-resident defendants.

FLAG.—National and State flags must not be desecrated.

HEALTH.—Adulteration of food is punished. No bakery shall be in a cellar, and all shall be subject to inspection. Pure water and ice is required to be furnished.

INSURANCE.—The investment of the funds of life insurance companies is carefully guarded.

LABOR.—No child under 14 years of age shall be employed during school hours. No employe shall be coerced not to join a labor organization. The Inspector of Factories is to examine all factories and work shops and see that they are well ventilated, that the machinery is well guarded and that sanitary conditions are perfect.

MORTGAGES of chattels securing a debt drawing illegal interest are declared void.

RAILROADS.—Electric cars may run on Sundays, and Railroad Commissioners may authorize the running of steam railroads on that day.

ROADS.—A Highway Commission is created to supervise and control all State roads.

Wide tires shall be used on heavy vehicles.

SCHOOLS.—Compulsory attendance is required and no distinction shall be made because of race or color.

TELEPHONE lines can only be erected or extended by order of the Superior Court of the District.

TRADE MARKS and labels are protected.



## DELAWARE.

AGRICULTURE.—A State Board of Agriculture and Horticulture is created. Orchards and nursery stock are to be inspected, and penalties inflicted upon those selling stock subject to insects, pests or disease.

CORPORATIONS.—An elaborate law has been enacted authorizing in very liberal fashion the incorporation of any organization or combination except for banking purposes. It conforms to the amended constitution of 1897. It bears close resemblance to the law of New Jersey and grants for the first time a free railroad law for obtaining charters for steam and electric roads.

CRIMES commenced in this State and completed elsewhere shall be punished as though committed in this State.

DIVORCE.—Court may change the name of wife and children.

GYPSIES must pay a State license of \$50.00 to pitch or settle their encampments, or carry on their transactions, or practice their craft.

HEALTH.—The State Board of Health is authorized to establish a Pathological and Bacteriological Laboratory to prevent the spread of infectious diseases. Candy shall not be adulterated.

MEDICINE.—The State Medical Council may revoke physicians licenses for persistent inebriety, conviction of crime, practicing criminal abortion or publicly advertising special ability to treat or cure chronic incurable diseases.

TAXATION.—A license tax is imposed on corporate franchises, based upon gross receipts, on telegraph, telephone, electric and gas companies.

TRADE MARKS, labels and the seals of labor organizations are protected from imitation.

## FLORIDA.

ATTORNEYS.—All applicants for admission to the Bar are to be examined in open court.

BONDS of officials may be given by surety companies having a paid up capital of \$250,000.00.

HEALTH.—A State Bureau of Vital Statistics is created.

The State Board of Health is continued and is to examine all lodging houses containing ten rooms or more and regulate their sanitary condition.

INSURANCE.—The “valued policy” law has passed.

All fire insurance companies doing business in the State shall maintain a resident agent.

LIVE STOCK.—It is made a felony to alter brands, and all live stock must be inspected before sale.

MEDICINE.—A State Board of Eclectic Medical Examiners is to be appointed by the Governor to examine graduates of the Eclectic schools only.

RAILROADS.—The Railroad Commission is given enlarged powers and can fix rates.

Common carriers must give ticket agents certificates of authority to sell tickets and all other persons are forbidden to sell the same.

It is made a misdemeanor for any other person than an employee to uncouple cars, handle brakes, or interfere with the operation of railroads.

Firing guns from trains is forbidden and it is made a misdemeanor to “beat one’s way” on a railroad—meaning, it is presumed, to steal a ride.

SCHOOLS.—Uniformity of text books is required by a plan of gradual approach.

#### GEORGIA.

AGRICULTURE.—Commissioner is to establish the Department of Horticulture and Entomology and employ an Entomologist. The inspection, analysis and sale of fertilizers is regulated.

ATTORNEYS.—The Supreme Court is to appoint a Board of Examiners.

BANKS.—A most interesting piece of legislation, action under which will be watched with much interest, is that creat-

ing a Commission of the Governor, State Treasurer and Comptroller General, which is to create and issue State bank notes to be furnished to State banks to the extent of not exceeding seventy-five per cent. of their paid up capital. These notes are to be a first lien upon the bank's assets, and stockholders are liable for their redemption to an amount equal to the capital stock owned. A reserve fund of twenty-five per cent. of its outstanding notes shall be kept on hand in legal tender notes or specie. If the United States Government shall attempt to collect the tax of ten per cent. upon State bank notes, provided by the Federal law, the Attorney General is required to test the constitutionality of the Federal statute.

**COURTS.**—Judges shall decide motions and demurrers within thirty days after their submission. Where decree or verdict in the Court below has been controlled by one or more rulings, it is not required that a motion for a new trial be filed, but the case can be presented to the Supreme Court upon bill of exceptions, containing simply the evidence or a statement of facts controlling.

**EVIDENCE.**—The equity rule is changed so that the answer of defendant of facts of his own knowledge, responsive to discovery sought, shall be evidence in his favor.

**LABOR.**—It is a misdemeanor for creditors to sell claims outside the State so as to garnishee exempt wages.

**TAXATION.**—Specific State taxes are levied upon all trades, occupations and professions, on insurance premiums and the gross receipts of express and telegraph companies. Telephone companies shall be taxed one dollar for each telephone.

**TRADE MARKS** and labels are protected.

#### IDAHO.

**CONSTITUTIONAL AMENDMENT** is to be voted upon authorizing the investment of the permanent school fund in real estate mortgages, as well as in Government, State and Municipal bonds.

The lengthy session of the Legislature of Idaho was occupied by the re-enactment of all the laws made by the Legislatures since the admission of the State in 1890. This was a curative process, the laws theretofore passed not having had the different readings required by the Constitution. This makes it somewhat difficult to decide as to what is new legislation.

I note briefly that which seems novel or important.

**BONDS** may be given by surety companies possessing \$100,000 capital and depositing \$25,000 in securities with the State.

**CORPORATIONS** sole may be created by the religious head of any church or religious society.

**CRIMES.**—Presentment may be by information.

**ENGINEERS.**—A State Engineer is to be appointed to inspect dams and dikes.

**GAME AND FISH.**—A Game Warden is to be appointed with stringent protective provisions.

**HEALTH.**—A State Board of Examiners is created to examine and license physicians and surgeons.

A State Board of Examiners for Dentists is also created.

**HORTICULTURE.**—A State Board of Horticultural Inspection is ordered, with power of inspection of all fruit orchards and nurseries, the destruction of stock diseased and the establishment of quarantine regulations.

**IMMIGRATION.**—A Bureau of Immigration, Labor and Statistics is established.

**JURIES.**—In civil actions verdicts may be rendered by three-fourths, and in misdemeanor by five-sixths of a jury of twelve.

**LABOR.**—Eight hours made a day's labor on public works.

Employes are prohibited from making any agreement with employers not to become or continue a member of a labor organization under penalty of fine or imprisonment.

A State Board of Arbitration is created.

Employers of labor on railroads, ditches, buildings and in mines shall record and publish names of owners and agents, times when workmen are to be paid and statement of all mortgages and liens.

**MINES.**—A State Inspector of Mines is to be appointed with much power invested in him.

**POLICE** officers shall not be brought into the State and specially deputed.

**ROADS.**—The State appropriates \$150,000 to build a wagon road, and a Commission is appointed to supervise the same.

**SCHOOLS.**—A State Board of Public Instruction and a State Board of Text Book Commissioners is created.

**SHEEP.**—A State Sheep Inspector is to be appointed, and a very stringent law has passed for protection of sheep.

**STATUTES** are to be codified by a Commission.

#### ILLINOIS.

**AGRICULTURE.**—A Board of Inspectors of five, one from each of the following organizations: The Horticultural Society, the Dairyman's Association, the Retail Dealers' Association, the Butter and Egg Board and League of Commission Merchants is created with power to inspect and license commission merchants. The manner of book-keeping, records and accounting is prescribed by law, with heavy penalties for any violation thereof.

The office of State Entomologist is created with power of inspection of orchards and nurseries. Without his certificate of freedom from dangerous insects or contagious plant disease, no stock can be sold, and infected orchards and nurseries, pronounced by him incurable, may be destroyed without compensation to the owner.

**ARBITRATION.**—Parties refusing to abide by the decision of the State Board of Arbitration may be punished, by fine only, as for contempt of Court.

**ATTORNEYS** are to be admitted to practice in Courts of Record only on license from two of the Justices of the Supreme Court.

**BONDS.**—Surety companies may be taken upon all bonds and undertakings.

**CHILDREN.**—A “Juvenile Court” is established, distinct from all other courts, in counties of over 500,000 inhabitants, for the trial, care and disposition of all dependent, neglected and delinquent children.

**CORPORATIONS.**—Pawners’ Societies are authorized, their rate of compensation for advances fixed and the storage of pawns and pledges and the sale thereof regulated. One Director shall be appointed by the Governor and one by the Mayor of the City in which the main office is maintained and the Auditor of Public Accounts is to make examination and exercise supervision over such Pawners’ Societies.

**CRIMES.**—The Board of Pardons is granted greater powers, among which is the right to parole criminals confined in the State Penitentiary.

The public exhibition for pecuniary gain of persons who have been conspicuous through some criminal act, which has a tendency to degrade human morals, or such exhibition of their pictures, or articles belonging to them, or the exhibition of persons whose deformity would attract public curiosity, is prohibited.

It is made a misdemeanor to injure or destroy bicycle paths.

No itinerant person shall camp on the public highway for more than twelve hours in any one township.

**ELECTIONS.**—Numerous amendments have been made in the election laws, and primary elections are provided for and regulated.

**FLAG.**—The use of the national flag for advertising purposes, or its desecration, is prohibited.

**FOOD.**—A State Food Commissioner is created with power to inspect all food and see to the punishment of those who adulterate the same.

**INSURANCE.**—Foreign insurance companies must be licensed, and the manner of doing business within the State is regulated.

Casualty insurance companies are authorized and regulated, with extensive powers of insurance.

**LABOR.**—Deception, misrepresentation, false advertising, false pretenses and unlawful force in the procuring of employes to work, are prohibited and failure to state the existence of a strike, lockout or other labor trouble shall be deemed false advertisement and misrepresentation, punishable by fine and imprisonment. It is declared a felony, with imprisonment in the penitentiary for from one to five years, to hire persons to guard with arms or deadly weapons other persons or property, and any person coming into the State with deadly weapons to so guard other persons or property, without a written permit from the Governor, shall be similarly punished.

Free Employment Offices are established, one in each city of over fifty thousand people, and three in cities of over one million. These offices and the officials are to be sustained and all expenses paid by the State.

No person is allowed to keep an employment agency, except after being licensed by the State and giving a bond, paying an annual occupation tax of two hundred dollars.

**MEDICINE AND SURGERY.**—The State Board of Health is to examine and license all physicians and surgeons.

A State Board of Veterinary Examiners is created, and no Veterinarian is to practice without a license.

The State Board of Health is to supervise all lodging houses, and the amount of air space therein in every sleeping room to each person is fixed by law. Lodging house keepers are to keep a register that has much detail.

**MINES AND MINING.**—A State Mining Board of five members is created to have supervision of mines. No inspectors of mines, mine managers, hoisting engineers, or mine examiners shall be employed until they are declared qualified by the State Board.

In addition to the five members of the Board, the Governor is to appoint seven Inspectors of Mines. All these officials are paid by the State and have important powers. Very minute legislation is had as to the character of construction

and the machinery of all mines, and safety appliances of every conceivable character are specifically required.

**SCHOOLS.**—"Parental or Truant Schools" are established in cities, in which children guilty of habitual truancy or of habitual violation of public school rules shall be confined and taught.

**STREET CARS.**—What was known as the "Allen Bill" was repealed by the last legislature. The bill repealed was passed two years ago and permitted the extension of street railway franchises by municipalities from twenty to fifty years. The law just enacted restores the old condition, and no franchise can be granted for a longer period than twenty years.

Much local excitement was caused by this issue and it became an important element in the election of members of the General Assembly.

#### INDIANA.

**CONSTITUTIONAL AMENDMENTS.**—At the general election in 1900 the following amendments to the Constitution will be submitted:

**SUPREME COURT.**—The Constitutional limit of Supreme Court Judges is not less than three or more than five. The proposed change is: "not less than five nor more than eleven Judges."

**ATTORNEYS AT LAW.**—The present Constitution provides that "every person of good moral character, being a voter" shall be entitled to admission to practice law in all courts of Justice. This wide "open door" policy, prolific in mischief to a confiding public, is to be changed so that "the General Assembly shall by law prescribe what qualifications shall be necessary for admission to practice law in all Courts of Justice."

**ADULTERATION** of food, drugs, liquors and confectionery is prohibited under heavy penalties, and the destruction of all articles adulterated is required by order of court. The State



Board of Health is charged with the duty of inspection and the enforcement of the law.

**CHARITIES.**—District Court Judges are to appoint in each County a non-partisan Board of Charities, charged with the inspection of and reporting upon the condition of all charitable and penal institutions and making recommendations relating thereto.

**CHILDREN.**—The importation of indigent children is forbidden, under heavy penalties, except as permitted by the State Board of Charities which is granted great power. Those who import such children into the State must give bond of \$10,000.00 that they are not incorrigible or of unsound mind, and if such child becomes a public charge, or be convicted of crime within three years, the importing parties shall forfeit \$1,000.00, to be recovered on the bond.

**COUNTY ORGANIZATION.**—The powers heretofore exercised over County officers by County Commissioners hereafter devolves upon a County Council of seven, four to be elected from councilman's districts, and three at large.

**CONTRIBUTORY NEGLIGENCE.**—The absence thereof need not be alleged or proven by the plaintiff in actions to recover damages in injury or death cases. It is made matter of defense and may be proven under general denial.

Dogs are recognized and protected as property.

Dentists shall be licensed and registered.

**ELECTIONS.**—Voting machines are authorized, with penalty of fine and imprisonment of those who tamper with or deface the same:

A voter selling or offering to sell his vote at any general, special or primary election or convention, for money or property or thing of value, or for the promise of favor or hope of reward, or who shall accept money, property or thing of value with the promise or pretense of voting or refraining from voting for any candidate, shall be disfranchised for not less than ten nor more than twenty years.

**ELECTRIC POWER** is granted special protection and those who injure, destroy or interfere with its apparatus, or unlawfully divert its current shall be punished by fine and imprisonment.

**FUGITIVES FROM JUSTICE** —Growing out of the sensational cases, involving most interesting questions concerning the locus of the crime, in which concealed poisons have been sent from one State to another with felonious intent, it has been enacted that a fugitive from justice is a person who, while in this State, commits a felonious assault upon a person in another State, or sends any poisonous drug to any person within any other State with intent to commit a felony.

**FORESTRY** is encouraged by permitting a limited amount of all tracts of land devoted to the growth of forest trees to be taxed at an assessment of one dollar per acre.

**INSANITY OF JOINT TENANT.**—Where husband and wife own real estate as joint tenants, or tenants by entireties, and one is adjudged insane, the proper Court is authorized to decree such estate to be a tenancy in common.

**LYNCHING.**—A “mob” is declared to be any collection of individuals, assembled for any unlawful purpose, intending to injure any person by violence and without authority of law, and the act of violence committed is declared to be “lynching.” When such violence results in death, those participating, or aiding and abetting, shall suffer death or imprisonment for life, and those present, but not participating, shall be imprisoned not less than two nor more than twenty-one years.

The law provides for impeachment of officers from whose custody prisoners are taken by mobs and where by-standers, being called upon, refuse to assist the officer in defending the prisoner, they are subject to fine and imprisonment.

**LOANS** to directors or officers of insurance, trust and deposit companies are made misdemeanors, and those loaning or borrowing are subjected to fine and imprisonment.

**LIBRARIES.**—A public library Commission is created to which is given an appropriation for the purchase of “traveling

libraries," which are to be carried about the State and loaned to local libraries, clubs, granges, colleges, societies, study circles and other associations. Townships may by vote establish free public libraries, taxing the people, within limit, for the maintenance thereof.

LABOR.—A Labor Commission is organized, composed of two members, one who shall have been for not less than ten years an employe for wages and who shall be affiliated with the labor interest; the other who shall have been for not less than ten years an employer of labor, both to be forty years of age and over, not members of the same political party and neither to hold any other office. Such Commission, upon receipt of information of a strike, boycott or other labor complication, shall put themselves in communication with the parties to the controversy, with a view to induce the parties to arbitrate. The arbitration board shall consist of the two Labor Commissioners, the Circuit Judge and one to be selected by each of the contending parties, and the Courts are charged with the duty of enforcing the award.

A Department of Inspection is created to carry out the provisions of a drastic and far-reaching law that provides with much detail and among other results the following: No person under fourteen shall be employed in any manufacturing or mercantile establishment, and no person under sixteen and no female under eighteen years of age shall work in such establishment more than sixty hours each week, and no person under sixteen shall be thus employed who cannot read and write the English language. Female labor in manufacturing shall not be employed between 10 o'clock P. M. and 6 o'clock A. M. No young person is permitted to operate any elevator. Great detail of legislation is had for safety and convenience of employes, providing for safety devices for elevators, hand rails and rubber covers for stairs, that all doors shall open outward and not be locked, bolted or fastened during working hours; that safety appliances, belt shifters and exhaust fans shall be used with machinery; wash rooms and

water closets in proportion fixed by the law and seats for all women and girls shall be provided; not less than sixty minutes shall be allowed for the noonday meal; abundant air space, lights and ventilation shall be furnished and all walls shall be lime washed or painted when the Inspectors shall order.

No room in any dwelling house shall be used for the manufacture of wearing apparel of any description or cigars, excepting by the immediate members of the family living therein.

The Chief Inspector is armed with most unusual powers and the penalties for violation of the statute are severe, inflicting both fine and imprisonment.

Wages must be paid weekly to all who labor or are "in any other service for hire" and where parties employing neglect so to do, suit is to be brought and fifty per centum of the amount of the judgment shall be added as a penalty to be paid to the school fund.

Unskilled labor on public work shall not receive less than fifteen cents an hour.

PHARMACISTS are to be examined, registered and licensed by a State Board of Pharmacy.

POLICEMEN in cities of over 100,000 inhabitants are to be pensioned on half pay when fifty years of age with fifteen years service, being physically or mentally unfit for police duty; and on the death of an active or retired policeman, from any cause, funeral expenses are to be paid, his widow is to receive a pension of \$20.00 per month, children under sixteen years of age \$6.00 per month and dependent father or mother \$12.00 per month.

REAL ESTATE.—If a man die intestate leaving behind him a second or subsequent wife without children by him, but leaving children by a previous wife the second or subsequent wife shall only take a life interest in the lands of her deceased husband, the fee to vest in the children of the previous wife.

REFERENDUM.—This principal in application to municipal ownership appears in an Act providing that no ordinance for

the purchase of or establishment of any water works or lighting plant or the granting of any franchise for the establishment or operation of any water works or lighting plant, street railroad, telephone or telegraph company in any incorporated town shall go into effect until thirty days after its passage and until voted upon at the polls, if within thirty days a referendum is demanded by forty per cent. of the legal voters of such incorporated town.

**RAILROADS.**—Where judgments against railroads are unpaid for one year, plaintiff may obtain an order from Court that any agent, conductor, employe, lessee, receiver or assignee shall pay upon the judgment one-half of the money of the Railroad in his hands, or of money that he may thereafter receive.

**TAXATION.**—All owners of real estate shall be allowed a deduction from the assessment of their property for taxation, of \$700.00, upon making affidavit that there exists upon such property a valid mortgage of that or a larger amount.

**TRADE COMBINATIONS.**—Combinations to induce, procure or prevent dealers or manufacturers of merchandise, supplies or materials intended for trade or used by any mechanic, artisan or dealer from selling such supplies to any dealer, mechanic or artisan, are prohibited and a fine and imprisonment provided for any person who shall take part in the making of such combination and for each day's continuance of such combination a penalty of \$50.00 is imposed.

### KANSAS.

**CONSTITUTIONAL AMENDMENT** increasing the Supreme Court Judges from five to seven and dividing the Court into divisions will be voted upon in 1900.

**BROKERS.**—Dealing in futures and "bucket shop" transactions are prohibited under heavy penalties.

**BUILDING AND LOAN ASSOCIATIONS** are placed under the supervision of the Bank Commissioner and a very comprehensive law passed regulating them.

**CITIES.**—City Courts are established and Justices of the Peace in cities ousted of jurisdiction.

The Board of Police Commissioners, created originally to enforce the prohibitory liquor law, has been abolished. This will practically bring about local option or home rule in liquor matters.

**COUNTIES.**—County Commissioners of Counties near the Arkansas River may levy a tax and appropriate money to protect such counties from injury by reason of the diversion of water for irrigation in Colorado. By what measures the dry stream is to be made to run water when it has been taken at the source by citizens of another State lying up the stream, the law does not state.

**COURTS.**—A Court of Visitation is created to take the place of the Board of Railroad Commissioners, which is abolished. The three Judges are elective in 1900 and meantime are appointed. The Court is invested with more power than has ever been conferred by law upon any human tribunal. It is to be in perpetual session and is given greater power over railroads, express and telegraph companies than can be exercised by their own Board of Directors or General Officers. The Court has legislative, executive and judicial powers within itself. It fixes rates and determines their reasonableness. It apportions charges among common carriers, classifies freight, compels train service, orders the building of depots, regulates crossings, prescribes rules for running of trains and in short all railroads are operated under its direction and guidance. When its orders are disobeyed, it tries the culprit, making its own rules of procedure. Any person may complain and at the cost of the State and with the aid of numerous officials, created for the purpose, the so-called trial is had. It may grant injunctions and appoint Receivers, being given both common law and equity powers, and may appoint masters, referees and marshals to carry out its orders. It shall investigate strikes and if it finds the railroad company at fault, it shall rectify matters by orders, and if the company does not obey the order,

the Court shall seize and operate the road. If the strikers are at fault it shall order them to cease the strike. In questions of rates or service raised by any complainant the company is presumptively wrong in the first instance. It is presumed to be guilty until it proves its innocence. The Court has apparently unlimited power to punish for contempt. It is both Judge and Executioner. No suit can be dismissed or compromised without the consent of the Court. Failure to comply with any order of the Court subjects the corporation to a fine of \$1,000.00 per day, and damages may be recovered by any person injured, with exemplary damages if the disobedience is wilful.

CORPORATIONS.—A “Charter Board” composed of the Attorney General, Secretary of State and State Bank Commissioners is created. It grants all charters, regulates foreign insurance companies doing business in the State, inquiring as to their solvency.

A graduated fee is exacted of corporations based upon the amount of their capital stock. Stockholders in all corporations, except railroads and religious societies, are liable in an amount equal to the par value of their stock. Corporations must make reports to the Secretary of State of matters within his discretion to require and report to him names and addresses of all stockholders. Twenty per cent. of the stock of all corporations must be paid in before they commence business.

American insurance companies not of the State of Kansas must pay two per cent. state tax, and foreign companies four per cent. upon gross incomes.

When an execution against a corporation is returned *nulla bona*, it shall be deemed insolvent and go to a receiver who shall sue all stockholders at once for unpaid subscriptions and superadded statutory liability. Fraternal beneficiary societies are provided for and are placed under the supervision of the Superintendent of Insurance, which officer is to be hereafter elected.

**ELECTIONS.**—The political disabilities of those who bore arms against the United States are removed.

The Australian ballot system obtains in Kansas and has been amended as to manner of printing ballots and arrangement of names.

**FISH.**—The office of Fish Warden is created.

**INSURANCE.**—Mutual hail insurance companies may be formed to protect growing crops.

**LABOR.**—A novel law provides for an annual convention of labor organizations. The delegates shall elect a President, Vice-President, Secretary and Assistant Secretary, who shall constitute the State Board of Labor and Industry. The Secretary shall be the Commissioner of Labor and Industry and factory inspector, and the Assistant Secretary shall be his Assistant. Miners are to hold a similar convention and the Secretary elected by such convention shall be the State Inspector of Mines. This election of salaried state officials by a part of the citizens acting in irresponsible conventions is certainly a new departure.

Wages must be paid in money.

**LIBRARY.**—Traveling libraries are provided for.

**OIL.**—The office of Oil Inspector is created.

**RAILROADS.**—When a railroad fails to furnish a shipper of live stock a pass both ways and damage is done to such stock, negligence on the part of the company shall be presumed.

**SCHOOLS.**—The school text book commission must adopt uniform text books with maximum charges therefor.

**TAXES.**—Ten per cent. is levied on all premiums received by unauthorized companies, to be paid by the party insured. Insurance companies organized in other States, authorized to do business in Kansas, pay two per cent. and foreign companies four per cent. on premiums.

**TRUSTS.**—The anti-trust law passed in former years was amended to reach combinations in seeds, grain, hay or live stock.



## MAINE.

ATTORNEYS are to be admitted only after examination, both written and oral, made by a Board of Examiners of five competent lawyers to be appointed by the Governor on the recommendation of the Chief Justice of the Supreme Court. Applicants, before examination, must have studied law in an attorney's office, or attended a law school, for at least three years and must answer correctly a minimum of seventy per cent. of the questions asked. No person shall be denied admission to the bar on account of sex.

DEBTORS.—It is a misdemeanor to advertise for sale debts, dues, accounts or demands owing by any person, unless the party advertising is an executor, trustee, sheriff or other official.

DESERTION of ship's crews is guarded against by punishing with fine and imprisonment any person enticing or assisting any member of the crew of any vessel to desert.

DIVORCE.—Intoxication from the use of intoxicating liquors, opium or other drugs is made cause for divorce.

FLAG.—The desecration of the National or State flag by using it for advertising purposes, by trampling upon it or mutilating it is made a misdemeanor.

INTEREST on personal loans with pledge of personal property is limited to the rate of three per cent. monthly for three months, and fifteen per cent. per annum thereafter on sums of two hundred dollars or less.

LIBRARIES.—Library Commissioners are to be appointed by the Governor to encourage free public libraries, and select books to be bought for traveling libraries, and books may be loaned from the State Library to citizens and free libraries.

LIENS are provided for to be made to persons who have worked at harvesting hay, for thirty days, and to those furnishing monuments, tablets or tombstones, for two years.

PHARMACY.—A State Board of Commissioners of Pharmacy is created which shall examine and license all apothecaries.

**RAILROADS.**—Ticket “scalping” is made a misdemeanor and none but agents of railroads are allowed to sell personal or limited tickets, and the same when unused must be redeemed by the company.

**SOLDIERS AND SAILORS** serving as volunteers are to be given extra pay by the State and be re-imbursed their outlays for doctors and nurses, and a limited amount is to be paid for funeral expenses. Pensions are paid by the State to those disabled and unable to make a living, who served either in the War of the Rebellion or the War with Spain.

**TRUST AND BANKING COMPANIES.**—Shareholders therein are responsible to the creditors of their companies to an additional amount equal to the par value of their shares, and an assessment may be ordered by the Court upon complaint of a bank examiner.

#### MASSACHUSETTS.

**BICYCLE** paths are protected.

**CATTLE.**—A Board of Cattle Commissioners is created with power to suppress contagious diseases, establish hospitals and quarantine and kill cattle incurably diseased, without compensation to the owner.

**COURTS.**—Seventy years of age with ten years consecutive service, or sixty years of age with fifteen years service, with incapacity to perform judicial duties, permits retirement of Judges of Supreme Judicial or Superior Courts on three-fourths pay.

**CRIMINAL PLEADINGS** have been greatly simplified and forms established.

The Bertillon method of identifying criminals is adopted.

**DAIRY PRODUCTS.**—Process butter must be stamped “Renovated butter.”

**DEBTORS.**—Collectors dressed in a way to attract public attention are prohibited.

**ESTATES.**—An elaborate law has been enacted relative to the descent and distribution of real and personal property.

ENGINEERS must be examined and licensed.

FLAG.—Desecration thereof prohibited.

HORTICULTURE.—Each town must elect a Tree Warden to care for public shade trees.

INSURANCE.—Fraternal beneficiary societies are authorized and regulated.

LABOR.—Weekly payment of wages is required.

Eight hours is a day's work when employment is by municipalities.

NEGOTIABLE INSTRUMENTS.—The law recommended by the Association was passed in 1898. The last legislature has amended it by providing for the three day's grace on sight drafts and bills of exchange.

SCHOOLS.—In cities where there are over 450,000 spindles, textile schools may be established.

SOLDIERS in the War with Spain have been recognized by several beneficent acts.

STREET RAILWAYS are authorized to act as common carriers for packages and small parcels.

TRADE MARKS and labels are protected.

TRUST COMPANIES.—No bank shall do business as such.

#### MICHIGAN.

AGRICULTURE.—Brokers and commission men dealing in farm products must give bond.

Adulteration of linseed oil and ground feed is forbidden.

BICYCLE paths are protected.

CHILDREN.—Corporations not organized under the State law are prohibited from receiving children or placing them in homes.

CITIES.—The City of Detroit was authorized to construct, acquire, maintain and operate street railways.

The Mayor and Council of said City may propose and the electors adopt amendments to the charter.

DAIRY PRODUCTS.—Process butter and oleomargarine must be labeled.

FORESTRY.—A State Forestry Commission is established.

HEALTH.—A State Board of Registration in Medicine is created to examine and license all physicians and surgeons.

A State Veterinary Board is ordered to examine all veterinarians.

A State Board of Examiners of barbers is created to examine and license barbers.

Women physicians shall be employed where women are restrained.

HORSE SHOERS are to be examined and licensed by a Board of Examiners appointed by the Governor of the State.

INSURANCE.—Where other States impose taxes, license fees, penalties and valuation of policies on Michigan companies, like impositions shall be made upon companies of such States.

INTEREST is reduced to five per cent. and by contract may be seven.

LABOR.—No child under fourteen shall be employed in any manufacturing establishment, and no child under sixteen shall work who cannot read and write, nor between 6 P. M. and 7 A. M. The Commissioner of Labor is to inspect all factories. No room in a dwelling house shall be used to manufacture clothing, cigars and artificial flowers without a permit from the factory inspector. Temporary water closets shall be placed by all buildings being erected.

LIBRARIES.—A State Free Library Board is created.

LYNCHING.—A "mob" is defined to be any collection of persons pretending to exercise correctional power over other persons by violence and without authority of law and the act exercised is called "lynching." The person injured and the legal representatives of those killed may recover from the County to the extent of \$5,000, the County having recovery over against the parties guilty of lynching.

MEDICINE.—The State Board of Medical Examiners issue diplomas.

**MARRIAGE.**—County Judges may secretly grant license to, and secretly perform the marriage ceremony for, females about to give birth to a bastard child, whether the female is of marriageable age or not.

Marriage is forbidden to persons having syphilis or other private diseases under penalty of five years imprisonment, and husband, wife and physicians may be witnesses.

Marriages heretofore made between whites and blacks are declared legal and children legitimized.

**MINES.**—An Inspector of Coal Mines is to be appointed to see to their safety.

**RAILROADS.**—An effort is to be made to have all railroads chartered by special act to surrender the same and incorporate under the general law and a Committee of State Officers has been appointed for that purpose.

Railroads, the major part of whose lines are within the corporate limits of cities are relieved from any limitation as to rates and fares.

Wages of railroad employes are a preferred lien.

**SOLDIERS** of the Spanish war are privileged to use the State Home and given preference in public employment over civilians.

Taxes are authorized to care for needy soldiers and pay funeral expenses.

**TAXATION.**—A Tax of three per cent. on the gross earnings within the State of express, and two and a half per cent. on telephone, companies is imposed.

A five per cent. tax is levied upon all bequests of over \$500.00 to those who are not heirs and certain relatives and regularly adopted children.

A State Board of Assessors is created to assess and tax the property of railroad, express, telegraph and telephone companies.

**TRUSTS** are declared to be combinations of capital, skill or arts to restrict trade or commerce; to limit or reduce the production or increase or reduce the price of merchandise or commodities; to prevent competition in manufacturing, transporta-

tion, purchase or sale; to fix any standard by which any price to the public shall be controlled or established; to carry out any contract regarding the price of commodities, produce, or transportation, or to pool any interest connected with the sale or transportation of articles, that the price thereof may be affected. Penalties are fines and imprisonment with forfeiture of charters.

Special provisions are made for the enforcement of the law by the Attorney General and other officials.

#### MINNESOTA.

CONSTITUTIONAL AMENDMENTS.—At the next general election the people will vote upon an amendment to the Constitution providing for loaning the permanent school and university funds in the bonds of municipalities and school districts. The investment must be approved by the State Board of Commissioners, no bonds can be purchased that exceed fifteen per cent. of the indebtedness of the assessed valuation of the municipal debtor, interest must not be less than three per cent. per annum and bonds must run not less than five nor more than twenty years.

AGRICULTURE.—The State Railroad and Warehouse Commission is to license commission merchants who deal in farm produce and they are to give bond for the benefit of consignors. The raising of sugar beets is encouraged and sugar beet seed is to be distributed.

ADVERSE POSSESSION of streets, highways, alleys and public grounds cannot ripen into title.

ARBOR AND BIRD DAY.—The Governor is to set apart a day for tree planting and to inculcate a sentiment for the protection of birds.

ATTORNEYS are to be admitted under rules fixed by the Supreme Court.

The Act is a substantial compliance with the recommendations of the American Bar Association.

**BANKRUPTS** discharged under the Federal bankrupt law may have all judgments against them declared satisfied by order of State Courts.

**BICYCLE PATHS** are protected and those throwing on any highway that which will injure bicycles, or puncture tires, are guilty of a misdemeanor.

**BANKS.**—An elaborate safe and trust company law has been enacted. For State funds deposited in banks they shall pay not less than two per cent. interest per annum on daily balances.

**CHILDREN.**—Those incorrigible or unsound in mind or body cannot be brought into the State and those dependent can only be brought in by permission of the State Board of Corrections and Charities and the giving of a bond.

The law relating to societies organized to secure homes for orphans, or abandoned, neglected and grossly ill-treated children has been amended and additional safeguards thrown around them.

Juvenile offenders, convicted in municipal courts, may be paroled and sentence suspended by an official called "Probation Officer."

**CITIES AND VILLAGES.**—Any village desiring to become a city may frame its own plan for local government consistent with the laws of the State.

The charter is to be framed by fifteen freeholders appointed by the District Court Judges. The charter is to be submitted to the voters and, if adopted, becomes the law governing the municipality.

Cities may plant shade trees and assess the cost on abutting property.

**CIVIL RIGHTS.**—It is made a misdemeanor to deprive any person of the full and equal enjoyment of the accommodation and privilege of all places of public resort, of amusement, or conveyances, because of race, creed, color, or previous condition of servitude.

**CORPORATIONS.**—Telephone companies may condemn for their use across and along the right of way of railroads.

All foreign corporations doing business in the State shall appoint an agent, upon whom process may be served; shall file articles of incorporation, and pay the State a license fee of \$50.00 on the first \$50,000 of its capital stock, and \$5.00 for every additional \$10,000 thereof.

Exceptions to the act are corporations manufacturing exclusively, loaning money or investing in securities; those raising live stock, cultivating lands, growing sugar beets, or canning fruits or vegetables; or corporations whose sole business is the transportation of passengers or freight by water.

When license shall issue, it shall run for thirty years and must then be renewed, if corporation still exists. A sworn statement must be filed showing the proportion of the capital stock which is represented by its property located and business transacted in the State.

COUNTIES.—County Commissioners may grant the use of highways to street railway lines operated by any power except steam.

DEBTS.—Husband and wife are not liable for the debts of each other.

DAIRY PRODUCTS.—A State Dairy and Food Commissioner is to be appointed with important duties devolving upon him. Milk men in cities and towns must be licensed. Dairies are regulated. It is a misdemeanor to sell “renovated or boiled butter” without stamping it. The use of chemicals to preserve butter, milk or cheese is prohibited.

ELECTIONS.—A law governing, with much detail, primary elections for the nomination of candidates, and another permitting the use of automatic voting machines have been enacted.

ELECTRICIANS are to be examined, registered and licensed in cities by a Board created for that purpose.

EXEMPTIONS have been liberalized. Sewing machines, bicycles and typewriters are added to the list.

FLAG.—The desecration, mutilation or improper use of the flag of the United States or of the State is punished.



**FORESTRY.**—The preservation and growth of forests is encouraged and a State Board of Forestry is created.

**GRAIN.**—A State Board of nine citizens is created to constitute tribunals of appeal from complaints of grain inspection. Their decision as to grade of grain is final.

**HORSES** shall not be “docked,” and docking their tails is made a misdemeanor.

**INTEREST** is reduced from seven to six per cent.

**JURORS** in counties over 200,000 inhabitants are to be selected by the clerks of the courts from lists made out by the judges.

**LIBRARIES.**—“Traveling Libraries” are provided for and a State Library Commission is created.

**NAVAL RESERVE** is established composed of eight companies.

**NUISANCES.**—Fences over six feet high, maliciously erected for annoyance of neighbors are declared a private nuisance and may be abated.

**PROBATE COURTS.**—Appeals therefrom to the District Court are provided and the time for filing claims is fixed.

**RAILROADS.**—Railroad Commissioners, heretofore appointed by the Governor, are hereafter to be elected.

All narrow-gauge railroads are to be made of standard gauge. Rates on grain, flax, lumber, live stock and coal in force for sixty days shall not be raised, except by authority of railroad commission.

Free transportation shall be given to shippers of live stock.

A caboose with a toilet room shall be attached to all live stock and emigrant trains. Railroads are authorized to lease, purchase or otherwise acquire other railroads or consolidate with them, when not parallel or competing lines.

**SCHOOLS.**—Compulsory attendance is enforced and a truant officer is to be appointed.

Uniform State certificates for teachers are provided for.

A State High School Board is created to provide for a higher education.

**SEALS.**—Use of private seals is abolished.

**SOLDIERS.**—Free tuition is granted for remainder of term to all students of the State University who enlisted in the war with Spain. Bodies are to be buried at the public expense.

Wills of personal property of a soldier or sailor made during service, who dies during the war, shall be probated when in his hand-writing, whether witnessed or not.

### MISSOURI.

**CONSTITUTIONAL AMENDMENTS** are submitted providing for authorizing a jury to return a verdict upon two-thirds of their number concurring therein, and authorizing counties to levy a special tax of fifteen cents on each \$100 of valuation for road and bridge purposes.

**AGRICULTURE.**—A State Poultry Association is created, with the Governor a member of the Executive Board.

**ATTORNEYS.**—Graduates of the Law Departments of the State University, Washington University, or Benton College are entitled to practice.

**BARBERS.**—A State Board to examine and license barbers is created.

**CHILDREN** in care of societies may be given out for adoption.

**CITIES.**—Business in cities over 50,000 inhabitants is divided into classes, seventy-three in number. These classes are divided into groups or grades, and it is made unlawful to expose or offer for sale in the same establishment, under a unit of management, goods, wares and merchandise at retail of more than one of the classes or groups without having obtained a license. The Governor appoints in each City a License Commissioner, who shall receive applications and issue licenses. The license shall not be less than \$300 nor more than \$500 for every class or group, two-thirds of the license tax to be paid to the City and one-third to the State. Heavy penalties of fine or imprisonment are imposed upon those doing business in violation of the act, which is declared to be for the purpose of regulating department stores.

**CORPORATIONS.**—Insolvent banks and trust companies are prohibited from making voluntary assignments, but must be turned over to the Secretary of State, who appoints a receiver.

Officers of Savings Fund, Loan and Building Associations receiving deposits, knowing the institution to be insolvent, are guilty of larceny, and failure of the institution is *prima facie* evidence of such knowledge.

**CRIMES.**—It is made a felony to give a second deed with intent to defraud, or to have burglary tools in possession.

Adults convicted of heinous crimes are disfranchised and cannot sit as jurors.

It is made a misdemeanor to send claims out of the State for the purpose of garnisheeing wages of residents of the State.

Police or peace officers shall not be imported into the State.

**ELECTIONS.**—The Governor is to appoint Election Commissioners to supervise elections in cities over 100,000 inhabitants.

Candidates for Judge shall not be nominated at a Convention where candidates for other officers are nominated.

**GARNISHMENT** shall not be issued for sums less than \$200.00 nor before judgment where the property sought to be reached is the wages of a railroad employe.

**HEALTH.**—The desirable office of Beer Inspector is created.

He is appointed by the Governor and is to inspect all beer and malt liquor and place his stamp upon that which is good.

As a counteracting influence the law providing for the inspection of watermelons has been repealed and the office in each county of Watermelon Inspector has been abolished.

**HORTICULTURE.**—A Manager, Inspector and Board of Trustees of a Fruit Experiment station are to be appointed by the Governor.

**INSURANCE.**—A new life-insurance law with ample safeguards has been enacted.

Where an insurance company has vexatiously refused to pay a loss the jury may add ten per cent. to the amount of the loss.

**LABOR.**—The Commissioner of Labor and Statistics shall establish in all cities over 100,000 inhabitants a free labor bureau.

No room in any dwelling shall be used by more than three persons, not immediate members of the family, in manufacturing clothing and goods for male or female wear, and any goods thus made shall not be sold.

When goods are made under unclean or unhealthy conditions, they shall be labeled by the Labor Commissioner "Tenement made" or "Made under unhealthy conditions" in letters two inches long and it is made unlawful to remove such tag.

No one shall work in a bakery room more than six days in one week, nor if afflicted with consumption, scrofula or skin disease, and no one shall sleep in such room.

Eight hours is made a day's work in all mines except coal mines.

Coal mined must be weighed before being screened and no contract to the contrary shall bind the parties thereto. Miners shall be paid at least once in every fifteen days and shall be given one hour above ground for each meal.

**MINES.**—The Governor shall appoint two mine inspectors, who are given much power in regard to mines.

**RAILROADS** shall settle damages for live stock killed within forty days after agreement of the amount, or pay double damages.

Railroad Commissioners have increased powers.

**TAXATION.**—All inheritances, except to direct heirs or persons dependant upon the testator, shall be taxed five per cent.

**TRUSTS.**—The State of Missouri has had more legislation on the subject of trusts and trade combinations and more cases have reached its higher courts than in any other State. The efforts to enforce these laws have created such widespread interest that I deem it well to give them extended comment.

In 1891 a statute was enacted, declaring that any corporation, partnership or individual that entered into, created or became a member of, or a party to any pool, trust or combina-

tion, understanding or agreement, to regulate the price of any articles of merchandise, or to fix or limit the quantity thereof, should be deemed guilty of a conspiracy to defraud. It was made unlawful to issue or own trust certificates, or to place the control of corporations, or the manufactured product thereof, in the hands of trustees, or to limit or fix the price or lessen the production or sale of any article of commerce, use or consumption. The penalty was a fine to individuals for each day's violation and forfeiture of charter of domestic, and of the right to do business of foreign, corporations. All contracts in violation of the law were declared void, and purchasers of commodities from such combinations of members thereof were declared not to be liable for the purchase and could plead the act in defense, in the event of suit for such purchase. Every corporation in the State was required annually, and oftener if required, to file affidavit with the Secretary of State that it was not and had not been within a year a member of any pool, combination or trust.

In 1895 the law was amended to include trusts and pools regarding premiums to be paid for fire insurance, except in cities of 100,000 inhabitants or over, and a daily fine was to be inflicted for any violation of the law. It was made the duty of the Attorney General to enforce the law.

In 1897 the penalties of the act were extended to successors of corporations, and the selling or offering to sell such properties was forbidden, making it impossible to realize anything from the assets of corporations whose rights were forfeited. There was also much detail as to showing to be made under oath by corporations, and penalties for not making answer to inquiries made by the Secretary of State and the Attorney General. The Circuit Attorney of St. Louis and the Prosecuting Attorneys of counties were required to enforce the law.

In 1899 the exception as to pools and trusts that excluded fire insurance companies in cities over 100,000 people was repealed, and additional provisions prohibiting contracts to prevent competition were enacted. Measures were provided

for taking the testimony of officers and agents of defendant corporations and for obtaining evidence, before the institution of suits, as to the existence of unlawful pools or trusts, with a saving clause that the testimony of witnesses should not be used against them in criminal proceedings.

The Courts of Missouri have upheld the constitutionality of these laws. In the St. Louis Court of Appeals, the case of the *National Lead Company vs. Grote Paint Company* was heard and decided. The Lead Company sued the Paint Company on an account for goods sold and delivered. The Paint Company set up as a defense that the plaintiff was the successor of an illegal combination to establish a trust designed to limit the price and production of goods of the kind sued for, and that the incorporation of the plaintiff was had to effectuate this end, and the plaintiff was a member of the trust. The Court of Appeals held the defense good, and decided that the Legislature had the power to enact such laws and provide that inquiries affecting the validity of charters of corporations might be made by private persons and in other than direct proceedings for that purpose.

In July, 1897, the Attorney General brought suit against seventy-three foreign insurance companies doing business in St. Joseph, charging them with violating the provisions of the anti-trust law by combining to maintain rates for fire, tornado and lightning insurance in said City. The case involved all the legal and constitutional questions apparently that could be raised, which were squarely met. The Supreme Court in its decision seems to maintain the law in every particular. The Companies were prohibited from doing business in the State. The judgment, it is understood, was afterwards modified through the action of the Insurance Commissioner and other State officers and a penalty of one thousand dollars was inflicted upon each company and they are allowed to do business without combination as to rates.

It is stated that the Attorney General has commenced suit of a similar character against about eighty other foreign insurance companies.

## MONTANA.

**BONDS.**—Surety companies may sign same.

**CORPORATIONS.**—A bishop, chief priest or presiding elder may become a sole corporation by filing articles with the Secretary of State, when the religious society permits or requires property to be held in his name.

**COURT REPORTER.**—This office is abolished in the Supreme Court and the Judges thereof are required to report their own decisions, being paid extra compensation therefor.

**FIREMEN** in cities are to hold their positions during good behavior and are to be aided, when disabled, out of a fund raised by taxing Insurance Companies.

**HORSES** cannot be removed from the State until inspected by a Stock Inspector or Sheriff, who must make record of description and brands and grant a permit to remove.

**HORTICULTURE.**—A State Board of Horticulture is created with extraordinary powers for the inspection of trees and nursery stock, with power to condemn and destroy that which is infected or diseased beyond cure.

**INSURANCE COMPANIES.**—No foreign insurance company can issue a policy except it be countersigned by a resident agent, to enable the State to collect the tax imposed on premiums.

**RAILROADS.**—Stealing a ride upon, is made a misdemeanor.

**SCHOOLS.**—Free County High Schools and Kindergartens are established.

## NEBRASKA.

**ARREST.**—The power exercised by Justices of the Peace to arrest in civil actions before judgment, for fraudulent causes, is abolished.

**BONDS.**—Mutual companies may be formed to furnish surety for members who occupy places of trust.

Dogs are declared personal property.

**ELECTIONS.**—The blanket system has been amended so that a vote may be cast for all presidential electors and individually for all other candidates.

Primary elections are controlled.

Voting machines may be used.

Under heavy penalties candidates for nomination and election are forbidden to expend money for any purpose except personal expenses, which are limited to \$100.00 where there are 5,000 voters, for each additional 100 voters to 25,000 \$1.50, and not over 50,000 voters \$1.00 for each one hundred.

After both nomination and election, each candidate must file a verified statement of his expenditures fully itemized.

Treasurers of parties must also file such statement.

**FOOD.**—A Food Commissioner is to be appointed by indirection, thus evading a constitutional inhibition. The Governor is to be the Commissioner with power to appoint a Deputy to perform the duties. He is to inspect and control the manufacture and sale of butter, cheese and vinegar.

Imitation of said foods must be marked and vendors licensed.

**HEALTH.**—A State Board of Examiners of Embalmers is to be appointed to examine and license embalmers. Also a State Board to examine and license barbers.

**INSURANCE.**—Brokers to procure insurance from companies not authorized to do business in this State are to be licensed, paying a fee of \$25.00 and 3 per cent. of all premiums paid, for their permit.

Resident agents are required.

Persons soliciting insurance in companies not authorized to do business in the State are guilty of a misdemeanor.

An elaborate law has passed regulating the formation, licensing and operation of all insurance companies. The Governor is made Insurance Commissioner with power to appoint a Deputy to perform the labor, thus attempting to evade the constitutional inhibition prohibiting the creation of executive officers by legislative enactment.



**LABOR.**—No female shall be employed in any manufacturing or mercantile establishment, hotel or restaurant more than sixty hours per week, and ten hours shall be for them a day's labor. Seats shall be provided for them.

No child under ten years of age shall be employed, and none under fourteen during school terms.

**LOAN AND BUILDING ASSOCIATIONS** are regulated.

**PAWNBROKERS**, junk, second-hand dealers and chattel loan brokers must pay an annual license and are regulated. They are required to make before noon of each day to the Chief of Police a description of all property pawned or sold, and of the person from whom received.

**RAILROADS** must not work train men or telegraph operators over eighteen hours consecutively.

**TITLE** cannot be obtained by adverse possession against any municipality.

#### NEVADA.

**BONDS.**—Surety companies may be accepted on bonds and undertakings.

**GUARDIANS.**—A guardianship law was enacted, looking to the care of children and insane people and their property.

**INSPECTION** of causes and remedies for diseases of live stock is provided for by a State Live Stock Inspector.

**MEDICINE.**—A State Board of Medical Examiners is created to examine and license physicians and surgeons.

**RAILROADS** are authorized to sell their property and franchises to any other railroad, whether foreign or domestic.

**SOLDIERS** may vote.

**TELEPHONES.**—Counties may, on petition of two-thirds of the voters, purchase or construct telephone lines.

**UNITED STATES SENATORS** may be nominated and voted for.

#### NEW HAMPSHIRE.

**CONSTITUTIONAL AMENDMENTS.**—At the November election, 1900, the question of holding a Constitutional Convention will be submitted.

ATTORNEYS are not to be held liable for fees of Court officers.

BANKS.—Deposit books shall be verified, at least, once in four years.

CRIMES.—Making or repairing tools known to be used for burglary made a crime.

FLAG, either National or State, shall not be desecrated.

GUARDIANS may be appointed on the application of persons who consider themselves unfit to care for their property because of age or infirmity.

HEALTH.—Plumbers shall be examined and licensed. Street cars shall enclose their platforms to protect employes. Embalmers shall be examined and licensed by the State Board of Health. Candy shall not be adulterated.

INSURANCE.—Foreign companies must maintain resident agents.

LIQUORS.—The Governor is to appoint a State Liquor Agent, from whom all liquors shall be bought by the liquor agents appointed by city and town authorities. The act prescribes the manner of sale of all liquors in the State.

PENALTIES.—All statutes giving any portion of a fine or penalty to those prosecuting or complaining are repealed.

RAILROADS.—Trespassers shall be fined and are barred of recovery, except for willful or gross carelessness on the part of the railroad.

REAL ESTATE.—Husband may convey direct to wife, and married persons who are minors may release dower and courtesy.

ROADS.—Width of tires is regulated.

SALES.—Trading checks are prohibited.

SOLDIERS and sailors in the Spanish war are to be paid by the State seven dollars per month during service.

#### NEW JERSEY.

ASSIGNMENTS for the benefit of creditors are regulated by new legislation.

ATTACHMENTS are allowed against executors, administrators, heirs or devisees of debtors where they could have issued against the debtor immediately prior to his decease.

BANKS AND TRUST COMPANIES.—Laws regulating the incorporation of banks, trust companies and safe deposit companies have been passed, and their regulation is provided with much of detail.

CHILDREN.—A State Board of Children's Guardians is created, with large powers over indigent, helpless, dependent, abandoned, friendless and poor children who become public charges.

CONVEYANCES.—A short form is adopted.

CIVIL SERVICE seems to be applied to policemen in that they cannot be removed except for cause. They are to be pensioned when disabled, and after their death, their widows and minor children are to receive pensions.

ELECTRIC POWER is made a subject for larceny and it is a misdemeanor, punishable by fine and imprisonment, to take it illegally for light, heat or power.

HEALTH.—A State Sewage Commission is created with power to prevent the pollution of streams, create sewage districts and authorize the construction of sewers by condemnation proceedings and assessments upon municipalities. The Board of Health has further power as to pollution of water, and may sue for penalties or enjoin. Horses are recognized as proper human food, after inspection, and when slaughtered and offered for sale, the meat shall be labelled "horse flesh."

LABOR.—Laborers not engaged in agricultural pursuits, or water-men, shall be paid their wages every two weeks, and agreements to the contrary are void. Only citizens of the United States shall be employed by public authorities or on public work.

LANDLORD AND TENANT.—No writ of dispossession shall issue for three days after judgment.

LUNATICS and idiots may be so declared, without jury, by summary order of the Chancellor, when their estate is under

\$500, and the estate of a lunatic may be mortgaged for his support.

**RAILROADS.**—County authorities may tunnel under railroads and natural or artificial waterways. When the Chancellor orders the manner in which electric railroads shall cross steam railroads, whether at grade, underground or overhead, damages shall be paid to any property owners affected.

**SOLDIERS AND SAILORS.**—Extra pay and medals are granted to volunteers in the Spanish war. A monument to those who lost their lives on the "Maine," and a sword to Admiral Sampson.

#### NEW MEXICO.

**ATTORNEYS.**—No one convicted of an infamous crime shall practice as an attorney unless pardoned.

**BONDS.**—Surety companies may be accepted.

**BANKS** shall annually publish names and amount of deposits whenever accounts have not been drawn upon for three years.

**CATTLE** shall be inspected before shipment, and a record shall be kept of cattle slaughtered, with description and names and addresses of vendors.

**FRAUD.**—False entries by employes or false written statements are declared felonies.

**HEALTH.**—Legislation is had to prevent pollution of springs, wells and streams. Where corporations collect money from employes for medical attendance, they shall erect and maintain pest houses.

**HORTICULTURE.**—County Commissioners may make quarantine regulations as to diseased fruit.

**JURIES** are selected by three persons appointed by the District Court, and the party demanding a jury shall pay \$24.00 a day in advance as jurors' fees, to be taxed as costs.

**OIL.**—A Territorial Commerce Commission is created with most extraordinary powers. Corporations producing, refining and selling coal oil, or any product of petroleum, must be licensed and pay \$500 yearly to the Territory. Those who do

not produce, but sell only, pay a small license as wholesale or retail dealers. The commission has the power to fix the minimum and maximum price at which oil shall be sold, and heavy penalties, with revocation of license, are imposed for selling under or over the prices fixed.

**PUBLIC FUNDS** shall not be kept or deposited outside the Territory.

**SCHOOLS.**—County Superintendent, on petition, may order question of voting bonds to erect school houses submitted to vote of people, and when district officers refuse to obey, the Superintendent may summarily remove such officers and “appoint others of his own choosing in their place.”

**TAXES** shall not be levied upon mining claims until one year after issuance of patent. Levy of one-half mill is made upon all horses, cattle and sheep, to pay bounties for killing wild animals.

#### NEW YORK.

**AGRICULTURE.**—Concentrated feed stuffs shall be sold in packages, showing quantity and quality. Sizes of barrels and packages containing fruit are regulated.

**ATTORNEYS.**—More stringent rules as to practicing attorneys are given. Settlements of suits shall not affect lien of attorney.

**BADGES.**—Fraudulent and illegal use of secret society badges is made a misdemeanor.

**BICYCLE** paths are protected. It is a misdemeanor to test endurance in bicycle riding or racing in a contest, by riding more than twelve out of twenty-four hours.

**CITIES** of 250,000 inhabitants, or more, may establish hospitals for treatment of pulmonary diseases. The Board of Examiners shall be continued to examine and license horse-shoers.

**CIVIL SERVICE.**—The rules of the civil service are greatly extended. The State and city officials, except those elected and those appointed by the Governor and Legislature, or

appointed under statutes by name, also all heads of departments, election officers and superintendents, principals and teachers in public schools, are brought under the civil service, with a system of competitive examination for all except laborers.

CORPORATIONS for supplying light, heat or power, through electricity, may have the use of streets. The personal liability of officers and directors is guarded.

DAIRY PRODUCTS.—“Renovated Butter” shall be labeled.

ELECTIONS.—Voting machines are to be tested and selected. The Governor is given enlarged powers for the protection of the elective franchise and the punishment of crimes against the election laws.

FLAG.—The State and National flags must not be used as mediums of advertisement.

JURORS.—A Commission of Jurors to pass upon the qualifications of jurymen is adopted for Richmond and Queen. and may be adopted in other counties.

LABOR.—An eight-hour law has passed, the main feature of which is the prohibition of the use of materials in public contract work if like wages were not paid where the material was prepared as were paid where it was used. This limitation would seem to apply without regard to where the material might be prepared, whether in the State of New York, in this country or abroad. No child under eighteen years of age and no female shall be employed in any factory using any emery or polishing wheel.

LIQUOR.—The high license law has been strengthened.

SAVINGS BANKS may invest in the first mortgage bonds of certain railroads.

SLOT MACHINES are prohibited, with prosecution of owner and destruction of machine.

SOLDIERS AND SAILORS are not to be sent to alms houses, but treated at their homes. Salaries of employes of the State and of the City of Buffalo who enlisted during the late war with Spain are to be paid during their term of service.

**TAXATION.**—A Franchise Tax Bill has become a law. Hitherto the tangible real and personal property only of corporations was taxable. Hereafter franchises will be assessed for taxation.

**TRUSTS AND POOLS** to control rates of transportation between this country and Europe are forbidden. Contracts and combinations to monopolize commodities in common use, to restrict competition in the sale or price thereof, or prevent the pursuit of any business or trade are declared illegal and void and are punishable by fine and imprisonment.

#### NORTH CAROLINA.

**CONSTITUTIONAL AMENDMENT** is to be voted upon fixing the suffrage for males; requiring a residence of naturalized or native-born citizens of two years in the State, the payment of a poll tax for the previous year and ability to read and write any section of the constitution in the English language. The educational qualification shall not apply to those who were entitled to vote January 1st, 1867, and to their lineal descendants.

**AGRICULTURE.**—The State Board is to investigate diseases of live stock and to supervise trade in fertilizers, reporting any dealers in the same who are members of trusts or pools.

**CORPORATIONS**, foreign, may be domesticated by filing charter with Secretary of State and paying legal fees. The Railway Commission is abolished and in its stead a Corporation Commission is to be elected, with large power as to fixing rates of charges in railroad, transportation, express, telephone and telegraph lines. It is also to regulate banks, trusts and insurance companies and is to assess the property of transportation companies.

**ELECTIONS.**—An elaborate election law has passed creating a State Board of Elections, which appoints the County Boards. All voters must be registered after payment of a poll tax.

**HEALTH.**—The State Board of Agriculture is to analyze food, and adulteration is to be punished. Water supply is protected.

**INSURANCE.**—The office of Commissioner of Insurance is created with great power and stringent provisions governing Insurance Companies.

**LABOR DAY** is made a legal holiday. The office of Commissioner of Labor and Printing is created, the incumbent to be elected.

**LIQUOR.**—Local option for the sale of liquors is provided for and the dispensary system is adopted as to certain counties.

**NEGOTIABLE INSTRUMENT LAW**, practically as recommended by the Association, has passed.

**ROADS.**—A rebate of one-half the road tax is allowed to those who use broad-tire wagons.

**TAXATION.**—A general tax law has passed. About all occupations pay a license tax. Telegraph, telephone and express companies pay two per cent. on gross receipts from State business. Corporations are taxed according to capital stock. All incomes derived from property not already taxed, and of over \$1,000 derived from salaries or fees, shall be taxed.

**TRUSTS.**—Formation of trusts are prohibited and heavy penalties, with forfeiture of charter, inflicted. Contracts in relation thereto declared void.

#### NORTH DAKOTA.

**CONSTITUTIONAL AMENDMENTS**, six in number, passed the sixth session of the Legislative Assembly. The first providing for a Board of Pardons, was passed by the fifth session and will be voted for by the people in 1900. The remainder will be submitted to the Seventh Legislative Assembly for approval. They are as follows: Grain grown in the State, held in elevators, may be taxed at a fixed rate; no lands other than school lands shall be sold at less than appraisal, and none less than five dollars an acre; a State Hospital for the Insane and an Institution for the Feeble Minded are established; the franchise, roadway, rails and rolling stock of railroads, and all property of express, sleeping car, dining car, telegraph and telephone companies shall be assessed at actual value, which



shall be apportioned among the municipalities through which they pass; permanent school or educational funds may be invested in United States, State, County, School District and municipal bonds and on farm lands to the extent of one-third of the actual value of said lands.

ACKNOWLEDGMENTS cannot be taken by an officer when party to an investment, or of a partnership acknowledging the same, or whose wife or husband is a party. A saving clause is had as to corporations.

BONDS.—Surety companies may be taken thereon.

CATTLE.—Persons slaughtering cattle shall record description of animal, name and address of person from whom purchased, and make a monthly report to the Secretary of State.

COURTS.—Causes must be continued when any interested attorney is a member of the Legislature.

CORPORATIONS for religious or charitable purpose shall not acquire more than one hundred thousand dollars in value of real estate.

DAIRY PRODUCTS are placed under control of Commissioner of Agriculture; licenses are required to be taken by dairymen, and renovated butter, oleomargarine and filled cheese must be labeled.

GAME AND FISH are protected, the office of State Game Warden created and license to hunt must be had, with fee of \$25.00 to non-residents and 75 cents to residents

NEGOTIABLE INSTRUMENTS.—The law recommended by the American Bar Association has been enacted.

RAILROADS.—The doctrine of fellow servant is destroyed as to railroad corporations.

REAL ESTATE.—Ten years' adverse open and undisputed possession makes title.

SCHOOLS.—Free text books are provided and physical training must be taught.

TAX DEEDS are declared absolute and conclusive of the facts therein recited.

## OKLAHOMA.

ANIMALS.—The introduction and spread of disease among domestic animals is guarded against.

BANKS.—A Bank Commissioner is to be appointed, and a law has passed regulating the organization and business of banking and duties and liabilities of officers and stockholders.

DOGS are declared personal property and stealing same is larceny.

ELECTIONS.—The Australian ballot law with the "blanket" provision for voting, was passed.

GEOLOGICAL SURVEY.—A Department of Geology and Natural History is established with the duties signified by the title.

INSURANCE.—Associations of not less than one thousand farmers may be formed for mutual insurance against loss by fire, hail, lightning and cyclones and much detail as to their regulation is indulged in.

LIBRARIES.—School Districts are required to levy a tax for public libraries. The law is compulsory.

TAXES.—Notes and mortgages given by members of building and loan associations are exempt from taxation.

WAREHOUSES.—A Chief Grain Inspector is to be appointed with supervision of all warehouses, elevators and granaries. License and bond are required and a complete system of grain inspection is provided.

## OREGON.

CONSTITUTIONAL AMENDMENTS.—The people will vote upon amendments providing for the initiative and referendum system of enacting laws and for universal suffrage.

ATTORNEYS of other States may be admitted to general practice if they are citizens of States according that privilege to citizens of Oregon.

BARBERS.—A Board of Examiners of Barbers is appointed and barbers must be examined, licensed and registered.

**BIOLOGIST.**—A State Biologist is to be appointed.

**BONDS** and undertakings may be signed by surety companies.

**CITIES.**—Police duty shall not be performed by imported armed men, nor shall such bodies be brought into the State or maintained, except by the municipality.

**CRIMES** may be prosecuted by information, and Grand Juries may be dispensed with.

**DENTISTS.**—A State Board of Dental Examiners is appointed and dentists must be examined and licensed.

**ESTATES.**—Executors and administrators may borrow money, mortgaging and pledging the property of the estate, to redeem lands or save interest.

**GAME AND FISH.**—A Game and Forestry Warden is to be appointed with large executive powers.

**HEALTH.**—A pure food bill has passed and the people are to elect a Dairy and Food Commissioner to analyze food, issue stamps for food sold that is adulterated and prosecute offenders.

**INSURANCE** companies must maintain resident agent.

**INTEREST** has been reduced from eight to six per cent.

**NEGOTIABLE INSTRUMENT.**—Law recommended by the Association has passed.

**RAILROADS.**—The Railroad Commissioner Law has been repealed and there is now no such law in Oregon.

**ROADS.**—Convicts are to work on public highways. Wide-tire vehicles are to secure to owner a rebate on road tax.

**SALES** of stocks of goods in bulk must be accompanied with a written statement under oath showing all creditors and amounts due each.

**SCHOOLS.**—A Board of Text Commissioners is created for uniformity of text books. The entire school system has been remodeled.

**TAXATION.**—The State Board of Equalization is abolished.

**WATER.**—The appropriation of water for mining, mechanical, municipal and agricultural purposes is regulated.

## PENNSYLVANIA.

**ACCOUNTANTS.**—A Board of Accountant Examiners is created to examine and license all who desire to act as public expert accountants and none but those holding the certificate of the Board shall act as such.

**AMENDMENTS TO LAW.**—In all amendments to existing laws the words stricken out or added shall be in different type, so that the change may be readily seen.

**ATTACHMENT.**—Extending the writ of foreign attachment to cases of injury to persons or property on land, occasioned by vessels or other floating structures, or resulting from any act done thereon.

**ATTORNEYS.**—Punishing those who hold themselves out, or advertise themselves, as lawyers who have not been admitted to practice in Courts of Record.

**BICYCLE PATHS.**—Their construction is authorized and willful injury thereto is made a misdemeanor.

**CHILDREN** in benevolent and charitable institutions may by the Courts be indentured during minority. Juvenile offenders convicted in Federal Courts may be admitted to State Reform Institutions.

**CITIES.**—In those of first-class a Bureau of Building Inspection is required, attached to the Department of Public Safety, under the control of the Director of Public Safety. The law at great length and with minutest detail regulates the construction of buildings. Cities are empowered to change and re-locate natural water ways by condemnation proceedings.

**CIVIL SERVICE.**—Examinations and the rules of civil service are applied to firemen and policemen in cities of the second class.

**COURTS.**—The jurisdiction of Orphan Courts and the Superior Court is enlarged.

**CORPORATIONS.**—Certain corporations shall pay, when hereafter organized, a bonus to the State of one-third of one per cent. of their capital stock, and any increase of stock of

such corporations, and those heretofore formed shall pay the same percentage on all increase of capital stock.

**DAIRY PRODUCTS.**—The sale of what is commonly called “boiled” or “process” butter is prohibited unless the same is marked “Renovated Butter.” The sale of oleomargarine and butterine is regulated and licensed.

**DOWER.**—Real estate may be sold to pay interest falling due to widows, but such sale shall not divest the lien of the dower.

**ENGINEERS** must be adults and examined and licensed.

**HEALTH.**—The public health is proposed to be guarded by prohibiting the sale of goods in second hand bottles and jars. The establishment or maintenance of additional hospitals, pest houses, and burying grounds, in the built up portion of cities, is prohibited.

**HORTICULTURE.**—Commissioners are to be appointed to examine orchards and nurseries, and, after inspection, order the treatment or destruction of trees and plants having disease or dangerous insects.

**INSURANCE.**—Policies issued by foreign companies must be countersigned by a duly authorized resident agent.

**JUSTICES OF THE PEACE** are authorized to hold their offices and try and punish offenders on the grounds of any regular exhibition annually held.

**LIBRARIES.**—A State Board of Free Library Commissioners is created to advise free library associations and to establish “Traveling Libraries.”

**LUNATICS’** estates may be used for the support of wives and children.

**PARTNERSHIPS.**—A new limited partnership law is enacted providing for use of a seal. The partnership articles must be recorded and in the place of business the names of all partners and the amounts paid in by each and the volume and page of the record must be posted.

**SCHOOLS.**—The minimum school term shall be seven months. The benefits of Soldier’s Orphan Industrial School and other

Orphan Schools is extended to children of soldiers, sailors, and marines of the Spanish-American War.

**TAXES.**—All retail and wholesale venders and dealers in goods, wares and merchandise are to pay a mercantile license tax annually, and in addition thereto an annual tax on the dollar on the gross amount of business done. Mercantile appraisers are to be appointed and a system of reports is inaugurated, with power in the appraisers to personally examine books. Heavy penalties are imposed for evasion or violation of the law.

**WIFE** may be a witness adverse to her husband where he sets up an attack upon her character, in criminal cases and in civil actions where the husband is sued for necessities furnished the wife.

#### RHODE ISLAND.

**AGRICULTURE.**—Commercial feed stuffs shall be labeled as to quantity and quality.

**BIRDS.**—A State Commission is to be appointed by the Governor to protect birds and prosecute those molesting them.

**CHILDREN.**—Kidnapping is made a felony. Probation offices are provided to take charge of juvenile offenders who shall be kept separate from adults.

**ELECTIONS.**—Primary elections and caucuses are regulated. Every political party shall elect a State Committee.

**NEGOTIABLE INSTRUMENT.**—Law as recommended by the Association has passed.

**RAILROAD.**—Use of or occupancy of land of Railroad Company by adjoining owner or of adjoining land by Railroad Company shall not create any right or interest in same.

**TAXATION.**—Insurance companies shall pay a tax of  $2\frac{1}{2}$  per cent. on gross incomes received on property insured within the State.

**TRADE MARKS** are protected.

**TRADING STAMPS** are prohibited.

## SOUTH CAROLINA.

ANIMALS abandoned by their owners and diseased, may be killed by the Society for Prevention of Cruelty to Animals.

AGRICULTURE.—A license is required for trading in sea island cotton in the seed. It is a misdemeanor for a cotton buyer to refuse to receive bales of cotton after purchasing by sample, where the bale weighs over three hundred pounds, because of lightness. Maximum charges have been prescribed for handling and selling tobacco by warehousemen. Fertilizers are to be inspected by the Trustees of the Clenson Agricultural College. The State Board of Health shall enforce quarantine laws as to live stock. Ginseng is protected by regulations as to the season for pulling or digging.

CITIES AND TOWNS.—Their charters may be amended by vote of the electors. Cities of 45,000 inhabitants shall not create debt or liability beyond the income of the current year without a vote of two-thirds of the Council, and then two-thirds of the qualified voters.

CORPORATIONS for transportation now obtain charters from the Secretary of State instead of by special act of the legislature.

HEALTH.—State Board of Health may enforce vaccination and those interfering or resisting shall be punished by fine or imprisonment “which shall not stand in lieu of vaccination.”

INJUNCTION for stay of execution or judicial sale shall not be granted without four days' notice, unless the Court or Judge prescribe a shorter time, and motion shall not be heard less than five days before sale.

INSURANCE.—Fire companies that combine to make rates of insurance shall have licenses revoked.

LABOR.—Seats shall be furnished for female employes. Wages of discharged employes shall become due immediately.

LIQUOR.—The law giving the Governor power to appoint police officers to enforce the Dispensary Liquor law has been repealed. The use of the impression of the palmetto tree on bottles is prohibited. Officers receiving rebates or commissions are to be punished.

SEALS on deeds and mortgages while not abolished, when it shall appear to be the intention of the party that the instrument should be sealed, it shall have the effect of a sealed instrument.

TELEGRAPH AND TELEPHONE companies are given the right of eminent domain and the use of highways and railroad rights of way.

#### SOUTH DAKOTA.

CONSTITUTIONAL AMENDMENTS.—Vote is to be taken at the next election on the question whether permanent school funds may be invested in mortgages on farm lands as well as State, county, school and municipal bonds. At the election of 1898 the people voted that the manufacture and sale of liquor should be under exclusive State control and conducted by salaried agents of the State. At the general election of 1900 the question of the repeal of this Article will be voted on.

ATTORNEYS.—The Supreme Court is the only tribunal that can disbar an attorney.

CATTLE shall not be loaded upon cars, or shipped, or driven from the State except by the owner, or on his written consent.

ELECTIONS.—Registration of all voters must be had this year.

FOOD.—An elaborate law has been enacted regulating manufacture and sale of food and providing against the adulteration thereof.

HEALTH.—A State Board of Embalmers is created to examine, register and license all persons embalming the dead and to regulate the business.

INITIATIVE AND REFERENDUM.—This interesting and novel method of legislation is to be applied both as to the State and municipalities under laws passed in compliance with the constitutional amendment adopted by the people in 1898.

LABOR.—Mine owners, before employing laborers, must post on their property a true copy of all mortgages and incumbrances.

MEDICINE.—Osteopathy is recognized and regulated.



**TELEGRAPH AND TELEPHONE.**—To divulge messages without written consent of sender made a misdemeanor.

### TENNESSEE.

**BATTLEFIELDS** are protected, and those removing or injuring any monument, marker, fence or other structure upon or adjacent thereto are punishable by fine.

**CATTLE.**—All persons slaughtering cattle must record names and addresses of those from whom they purchased, and description of the animal purchased.

**CEMETERIES** are not to be located within ten miles of city upon any stream or watershed supplying same with water.

**COURTS.**—Terms shall be extended as to all cases on trial at the time fixed for the expiration of the term, until such cases are disposed of. Many bills were passed repealing special and portions of general acts establishing law, chancery and criminal courts, which were integral portions of the judicial system of the State. They provoked much public discussion and excitement, and involved the constitutional question whether the legislature has power thus to terminate the functions and emoluments of a Judge, constitutionally elected and commissioned, before the expiration of his term. There was a popular demand for retrenchment in judicial expenses and claim that the number of Judges was excessive. The Constitution gives the Legislature power to remove Judges, for cause, by a concurrent two-thirds vote of both houses; of which proposed action the incumbent should have ten days' notice. The Legislature whipped the legal devil around the stump by acting under this supposed Constitutional power. The concurrent resolutions declared the removals were for economical reasons and on their face expressly excluded any possible suggestion or inference of personal incompetency, inability, inefficiency or delinquency.

**ELECTIONS.**—In certain populous counties primary elections are to be held under the general election law.

**EXEMPTIONS.**—Wages of all employes to the extent of thirty dollars are exempt.

**GRAVE ROBBERY** is made a felony, punishable with imprisonment not less than two years. Bodies of those dying in penal or charity institutions, when unclaimed by friends or relatives, shall be turned over to regularly incorporated medical and dental colleges.

**HOLIDAYS.**—Saturday afternoons and the second Friday in May, known as Confederate Decoration Day, are made public holidays.

**INSURANCE.**—Fire and marine insurance agents must be licensed by the State Insurance Commissioner and must pay the U. S. Revenue stamp on the certificate issued by him and all policies must be signed by a local resident agent, that the tax due the State on premiums may be collected. The certificate of any insurance agent misrepresenting any material fact as to terms, conditions or character of a life insurance company shall be revoked.

**LABOR.**—All coupons, scrip, punchouts and store orders issued to employes must be redeemed in money for their face value, if presented within thirty days of issue. Contractors on public works must give bonds to pay for all material and labor. Counties must work county prisoners on public roads. A State Shop and Factory Inspector is to be appointed by the Governor, with large powers.

**MARRIAGE.**—Written consent of parents or guardian required for persons under sixteen years of age.

**MEDICINE.**—Osteopathy is recognized and regulated.

**MAINTENANCE.**—All statutes on maintenance and champerty are repealed.

**NEGOTIABLE INSTRUMENTS.**—The uniform negotiable instrument law recommended by the American Bar Association was enacted.

**NEWS.**—Monopoly in news is prevented by requiring agencies to sell news to all newspapers and publishers at the same price.

**OIL.**—Inspectors of oil and other illuminators are provided for.

**PARTNERSHIP.**—Retiring partners are exempt from further liability after four weeks' published notice of retirement.

**PERSONAL PROPERTY.**—Conditional sales with title reserved for security must be in writing.

**RAILROADS.**—Single railroads shall not monopolize narrow mountain passes.

**REVENUE.**—An elaborate revenue law has passed with specific occupation and business taxes on nearly every form of business.

**SCHOOLS.**—Uniform text books are required in public schools, to be selected by a State Commission. Counties may establish High Schools.

## TEXAS.

**CONSTITUTIONAL AMENDMENTS.**—Acting under the provision of the Constitution of the United States providing that on the application of two-thirds of the States a Convention shall be called for proposing amendments to the Constitution, the Legislature of Texas requests Congress to call such Convention. An amendment providing for the formation of irrigation districts and levying taxes to pay for ditches is to be submitted.

**AGENTS** for the state are to be appointed, one to purchase supplies for eleemosynary institutions and two to investigate and prosecute depredators on the public lands.

**AGRICULTURE.**—A State Entomologist is to be appointed to take means to destroy insects injuring cotton. Commercial fertilizers are to be analyzed. Public weighers to the number of five in each city are to be appointed by the Governor in all cities which receive annually 100,000 bales of cotton for sale or shipment. All other cities and counties are to elect public weighers. They are to weigh all cotton, wool, grain and sugar sold or offered for sale and mark the weight on the packages containing the same.

## TEXAS.

**BONDS** of guardians may be furnished by surety companies.

**COURTS.**—In each city, town and village a "Corporation Court" is established, with limited civil and criminal jurisdiction.

**HEALTH.**—Selling or giving tobacco to a minor under sixteen years of age is made a misdemeanor. Quantity and quality of wheat and corn and products thereof must be marked on the package.

**INSURANCE.**—Fraternal beneficiary societies are authorized.

**LABOR.**—Trades Unions are established and membership is authorized, and it is made legal for them to induce by peaceable means other persons to accept or quit employments or pursuits, but they shall not invade the premises of another without his consent.

**PENSIONS.**—Needy Confederate soldiers are pensioned, in compliance with a constitutional amendment lately adopted.

**RAILROADS.**—A law has passed inflicting a severe penalty, imprisonment in the penitentiary for not less than two nor more than five years, for any person giving rebates or drawbacks, charging one shipper more than another, giving unreasonable preference or unjust discrimination. Companies must furnish cars on demand and a deposit of one-fourth of the freight charges, under heavy penalties. Railroads less than thirty miles long may be leased by other roads for not longer than ten years. General officers must reside in and keep their offices in the State of Texas. The Railroad Commission are given power to fix emergency rates to prevent inter-state rate wars.

**TAXATION.**—A Tax Commission is appointed to devise ways and means for securing a more efficient method of taxation. A Revenue Agent is to be appointed by the Governor to enforce the revenue laws and investigate and check up all receiving and disbursing officials.

**TRUSTS.**—A strong anti-trust law has been enacted with heavy penalties, including fine, forfeiture of charter and ina-

bility to recover for any article sold or contract made. It prohibits trusts, pools, monopolies or interference with competition in articles of commerce, insurance premiums or the gathering or distribution of news.

WHITECAPPING is defined to be the posting or sending of any anonymous notice or threats to do personal violence with intent to interfere with the right of any person to occupy any premises, precinct or county, or to follow any occupation. The penalty is imprisonment not less than two years nor more than five.

#### UTAH.

ART.—A State Institute of Art is established, with a State Board to govern and control.

BONDS and undertakings may be made by surety companies under rigorous restrictions to insure their solvency.

CITIES may summarily remove street or steam railway companies' tracks when unused for nine months.

CONVICTS.—The State Board of Pardons may parole convicts who have served the minimum term fixed by law, except those convicted of murder.

ELECTIONS.—Primary Elections are regulated and illegal voting thereat punished.

EVIDENCE.—Abstracts of title certified by licensed abstractor or County Recorders shall be *prima facie* evidence of their contents.

EXECUTIONS.—Time for issuing same and liens of judgments extended from five to eight years.

EXEMPTION LAW amended to allow head of a family sixty days' wages.

GAME AND FISH.—A State Fish and Game Commissioner is appointed with large powers, and each County must appoint a County Game and Fish Warden.

HEALTH.—The State Board of Health is granted extraordinary powers and can extend quarantine regulations. The feeding of cows by dairymen is regulated, and they are for-

bidden to feed swill, brewers' malt, vinegar slops, distillery sprouts or other injurious food.

**HORTICULTURE.**—The State Board of Horticulture is to select County Fruit Tree Inspectors, with powers incident to their function. A State experimental fruit farm is established.

**MINING.**—A new mining law was enacted, among other things, doing away with mining location work, except the assessment work under United States laws.

**NEGOTIABLE INSTRUMENTS.**—The law recommended by the American Bar Association has been enacted.

**RAILROADS** may be incorporated to acquire and consolidate with and purchase the franchises of other railroads.

**TITLE** by adverse possession cannot be acquired against municipalities.

#### VERMONT.

**ATTORNEYS.**—Board of six examiners to be appointed by the Supreme Court.

**CONSENT.**—Age of consent changed from fourteen to sixteen years.

**CORPORATIONS** seeking incorporation must deposit in the State Treasury sums of money proportionate to the amount of their capital stock.

**COURTS.**—County Courts may render judgment and enter decrees in vacation, if case heard during term.

**FLAG** of the United States shall not be desecrated.

**GAME AND FISH** receive full protection by new laws.

**GRAND JURY.**—The State's Attorney may take a Clerk to report testimony before Grand Jury.

**HEALTH.**—A State Bacteriological Laboratory is established.

**INSANITY.**—Persons charged with crime and pleading insanity may be given by the Court to the care of the superintendent of the State Asylum for observation and report.

**INFORMATION** may be lodged instead of indictment found in all criminal cases, except capital crimes and where imprisonment is for more than twenty years.

**MEDICINE.**—Practice of, is regulated and Canadian Medical College graduates must attend lectures in some Medical College of the United States.

**PARDONS.**—A Board of Prison Commissioners is established to investigate applications for pardons and report to the Governor.

**RAILROADS** connecting at the State line may own, construct and maintain terminal and connecting facilities. Mileage books of 1,000 miles must be sold by railroads at two cents per mile and may be used by bearer.

**REAL ESTATE.**—Husband may be compelled by Chancery Courts to join in deed of wife's property.

**ROADS.**—The Governor shall appoint a State Highway Commissioner with large powers as to highways.

**SALES.**—Trading stamps or checks are prohibited. The sale of what is called "Concentrated Commercial Feeding Stuffs" is regulated with much strictness as to inspection and analysis by the Agricultural Experimental Stations.

**SCHOOLS.**—The Governor is to appoint a Board of Normal School Commissioners to take charge of Normal and Training schools.

**SURETY COMPANIES.**—Foreign surety companies must have a paid up capital of two hundred thousand dollars. Foreign Annuity Companies must have a capital of one hundred thousand dollars. No probate Court shall accept a foreign surety company on any bond unless it has deposited with the Insurance Commissioners securities worth one hundred thousand dollars.

**STREET CARS** must be equipped with fenders and guards.

**SOLDIERS AND SAILORS** have been cared for as to travelling expenses, medical attendance and pay.

**TAXES** are exempt from public and circulating libraries. An error of part of a tax list or a partial illegal list does not vitiate or render void the whole tax.

**TRADE MARKS** filed with the Secretary of State are protected.

**TOWNS AND VILLAGES** may appropriate money to exterminate worms on trees in public parks and highways.

## WASHINGTON.

CONSTITUTIONAL AMENDMENT to allow Three Hundred dollars exempt from taxation to heads of families.

AGRICULTURE.—A bounty is given to sugar from beets. A State Hop Inspector is to be appointed.

BICYCLES are declared baggage, and paths are protected.

CHILDREN.—Orphaned, homeless, neglected or abandoned, may be cared for by organized societies and homes found for them.

CORPORATIONS.—Right of way for "logging" by timber owners, and for irrigation ditches may be condemned.

DAIRY PRODUCTS.—A State Dairy Commissioner is to be appointed with large powers. Skimmed milk and cheese made therefrom must be labelled in large letters. Milk cans must be marked showing capacity and all milkmen in cities must be licensed.

ELECTRIC POWER companies are given the power of eminent domain, and those interfering with electric currents are to be punished.

GAME AND FISH.—The office of State Game Warden is created.

HEALTH.—A pure food bill has passed. The State Board of Pharmacy shall examine and license all druggists. Water supply to cities is protected.

HORSE-SHOERS.—A "Horse-shoers Board of Examiners" is required to examine, register and license all horse-shoers in cities. Similar enactment has been had in 1897 and in 1898 in Minnesota, Maryland, New York, Colorado and Illinois.

INSURANCE.—Foreign companies must maintain resident agent.

LABOR.—It is a misdemeanor to black-list an employe. Eight hours made a day's work on public works.

MINING.—An elaborate mining law, similar to Colorado's law, has been passed.



**NEGOTIABLE INSTRUMENT.**—Law recommended by the Association has passed.

**PARDONS.**—The State Board of Pardons has been abolished.

**SCHOOLS.**—Compulsory attendance is required in cities over ten thousand inhabitants.

#### WEST VIRGINIA.

**CONSTITUTIONAL AMENDMENTS.**—The people will vote in 1900 upon an amendment that no charter of incorporation shall be granted to any church or religious denomination ; but societies may be formed for missionary purposes.

**BONDS** and undertakings may be made by surety companies, provided they deposit in one of the State Depositories \$50,000.00 in cash or collateral security equivalent to that amount. This deposit may be waived by the Auditor, provided the surety company files the certificate of a United States official that such company is accepted upon the bonds of government officials.

**CHILDREN.**—Abandoned and neglected, helpless aged persons and animals are placed under the care of a State Board called "The West Virginia Humane Society" a part of which board shall be women. Orphan children and those in alms houses may be placed in homes by Childrens' Aid Societies.

**DEATH PENALTY** is to be executed by hanging and within an enclosure in penitentiary walls not open to the public.

**HEALTH.**—The State establishes three hospitals, each under a State Board, for free treatment of those hurt in mines and on railroads. Others injured or hurt may be treated at cost to the State. Embalmers are to be examined and licensed by a State Board of Embalmers.

**INSURANCE.**—The "valued policy" law has been adopted.

**LABOR.**—Eight hours is made a day's labor on all public works.

**NEGOTIABLE INSTRUMENTS.**—Days of grace are abolished.

**PARDONS.**—A State Board of Pardons is created to consider and advise the Governor as to pardons, commutations of sentence and reprieves.

## WISCONSIN.

**CONSENT.**—Age of consent changed from fourteen to eighteen years.

**COURTS.**—Judges shall not be paid salary until they file oaths that no cause pending has remained undecided for ninety days after submission.

**DAIRY PRODUCTS.**—"Renovated butter" shall be stamped and sold as such.

**ELECTIONS.**—Primary Elections and caucuses are stringently regulated.

**HEALTH.**—Factories and workshops are regulated very strictly as to sanitation, air space and conveniences. Clothing and cigars shall not be manufactured in living rooms by those not members of the family. Cigars shall not be manufactured under ground. The milk supply is carefully guarded.

**HORTICULTURE.**—Trees and nursery stock shall be inspected and any incurably diseased destroyed.

**LABOR.**—The places of payment of time-checks is fixed. Notice to quit employment or discharge employe must be reciprocal. It is a finable offense to threaten discharge or to promise higher wages to influence a person's vote, or to coerce any person to agree not to join any labor union as a condition for employment. Seats shall be furnished for female employes.

**LIBRARIES.**—Traveling libraries are provided for.

**LEGISLATIVE AGENTS** and counsel employed to promote or oppose legislation, affecting the pecuniary interests of any person or corporation, must have their names recorded in a legislative docket provided for the purpose. No other person shall thus act under heavy penalty. Within thirty days after adjournment of the Legislature the employer must file with the Secretary of State a sworn statement showing in detail all the expenses and expenditures of such agent or counsel.

**MARRIAGE.**—License must be obtained at least five days before marriage. Heretofore licenses to marry were not required and Wisconsin was a Gretna Green for adjoining States.

**MEDICINE.**—Physicians and surgeons must be examined and licensed by the State Board of Medical Examiners.

**MINORS** under fourteen shall not be employed except during vacation of public schools. Those under sixteen shall not work more than ten hours in any one day, nor before six in the morning nor after nine at night.

**NEGOTIABLE INSTRUMENT.**—Law recommended by this Association has passed.

**PASSES.**—It is made unlawful for any political committee, candidate for office, State, County or municipal officers, to ask for or receive any pass or frank on any railroad, express or telegraph company for the free transmission of any person, property or message. The penalty for violation is very severe, being fine from \$200 to \$1,000, or imprisonment in the penitentiary not less than one nor more than five years.

**PENSIONS** may be given by cities to disabled firemen and policemen, and widows and orphans of deceased members.

**STREET CARS.**—Unlawful for any person to use transfer tickets unless issued direct to them.

**TAXATION.**—A Commissioner of Taxation is to be appointed, and a very extensive tax law has passed looking to a uniform and improved system. The method of taxing express, sleeping car, equipment companies and freight lines upon capital stock and property is provided in much detail. Taxes are imposed on gifts and legacies of property worth over ten thousand dollars, of five per cent., when not to an immediate heir, and one per cent. to those of kin.

**UNITED STATES SENATORS.**—In any legislative caucus to nominate a candidate for Senator of the United States, members shall vote *viva voce*.

#### WYOMING.

**ATTORNEYS.**—The loose methods of admission heretofore in vogue are remedied. Applicants must pass an examination and be favorably recommended by a board appointed by the Supreme Court. Thereupon the Supreme Court admits to

practice in all Courts of Record, upon finding the person qualified in all respects.

**BONDS OF OFFICIALS.**—Sureties on bonds of public officers may be relieved from further liability on giving fifteen days' notice to the approving authority. The official must give other security or vacate his place. Officials are permitted to give responsible surety companies as sureties upon their bonds.

**BOUNTIES**, both State and County, are given for destruction of certain wild animals.

**CHILDREN.**—Deserted, orphaned or surrounded by evil and corrupting influences are under court orders to be cared for and given to any active Society organized to secure homes for such children.

**EVIDENCE.**—Husband and wife may be witnesses against each other in many cases in which heretofore they were barred.

**GAME AND FISH** are protected and preserved by very stringent laws and the office of Game Warden is created.

**HEALTH.**—County, City and Town Boards of Health are created with extraordinary powers of investigation, regulation and eradication of all sources of disease. They can make quarantine regulations, erect pest houses and destroy infected property.

**INSURANCE.**—All companies doing business shall pay to the State two per cent. of all amounts hereafter or heretofore received upon premiums, where policies have lapsed or been forfeited.

**JURORS.**—An elaborate law has for its object the selection of jurors and compelling the performance of jury duty. A juror must be a male citizen able to understand the English language and appear upon the last assessment roll. When it is recalled that woman suffrage obtains in Wyoming this exaction of Jury duty from the males of the State only, is worthy of note.

**LIQUORS AND GAMBLING.**—Where a husband spends his earnings for liquors, or in gambling, and his wife or family are deprived of the common necessities of life, the wife may serve

notice upon the liquor dealer not to furnish liquor to him, or the gambling house not to permit the husband to game, and after such notice the keeper of the liquor or gaming house is liable for all damages to wife or children.

**MEDICINE AND SURGERY.**—A State Board of Medical Examiners is created and no person shall practice without examination and license.

**OFFICERS** incurring liability for municipalities beyond the lawful limit are made individually liable upon their bonds.

**RAILROADS.**—Persons derailing trains, boarding trains to rob, or placing explosives upon the track with intention to blow up or derail, or firing bridges or trestles with intent to wreck cars or trains, shall be punished with death or life imprisonment.

**SCHOOLS** are to be furnished with free text books.

**THEATERS.**—Head gear obstructing view of any other person must be removed, or a fine ensues.

**TRADE MARKS.**—Labels, trade marks, stamps and forms of advertisement, may be adopted and owner may enjoin others from their use. Imitating or counterfeiting such trade marks is made a crime, punishable by fine and imprisonment.



# ANNUAL ADDRESS

BY

WILLIAM LINDSAY,

OF KENTUCKY,

SENATOR OF THE UNITED STATES.

Seventy years ago a philosopher, poet and seer, contemplating the union of the waters of the Pacific Ocean and the Carribean Sea, by a canal across the Central American countries, indulged in speculations which, in the light of the present, seem imbued with the spirit of prophecy. It may be foreseen, he said, that the United States, with their Westward predilections, will in a few years occupy the countries beyond the Rocky Mountains; that along the coast of the Pacific Ocean where nature has formed capacious harbors, cities will spring up for the furtherance of intercourse with China and the East Indies; that a more rapid water communication between the Eastern and Western shores of North America than "the tedious, disagreeable and expensive voyage round Cape Horn," will become necessary, and then, the United States will effect a passage from the Mexican Gulf to the Pacific Ocean for "both merchantships and men-of-war."

Inspired by the thought he exclaimed: "Would that I might live to see it—but I shall not. I should like to see another thing—a conjunction of the Danube and the Rhine, \* \* \* and thirdly, and lastly, I should wish to see England in possession of a canal through the Isthmus of Suez. Would I could live to see these three great works. It would be well worth the trouble to last fifty years more for the very purpose."

The Danube and the Rhine, their waters yet unmixed, flow their separate ways to the Black Sea and the German Ocean, and the ships which go down to the sea still pursue their course between the Atlantic and Pacific by the "tedious, disagreeable and expensive voyage round Cape Horn;" but otherwise, the

wonderful things foreseen by Goethe have been transformed into living and palpable realities, and the time is not far distant when "both merchant-ships and men-of-war" will sail from the Mexican Gulf to the Pacific Ocean, through a passage-way created by American enterprise in response to the demands of American commerce.

Commercial progress has no halting place. Commerce is not the servant, but the master of national policies. They may cripple or retard its growth, but in the end it overrides all obstructions and dictates the economic policies of every country. Our own country affords an illustrious example of this great truth in the changes resulting from the Spanish war. It is not, however, to the economic, but to the legal and political phases of this interesting fact, that I shall venture to direct your attention.

The absorption of the Hawaiian Islands through the joint resolution of the two Houses of Congress, and the acquisition of sovereignty over the Philippine Archipelago through the treaty of peace with Spain, mark the inauguration of a new American policy, and raise for consideration supremely important questions of Constitutional power.

At the meeting of this Association last year, doubt was expressed by your distinguished president concerning the propriety, at that time, of discussing the results of the overwhelming victories on land and sea which had attended our arms; but now that peace has been restored between the two contending nations, the field of diplomacy and the work of the diplomat no longer impose the duty of silence. The problems of the future and the duties of the present demand consideration and invite discussion. That discussion can nowhere find a more appropriate theater than this distinguished assemblage of American lawyers, whose object is the advancement of the science of jurisprudence. With the American lawyer, jurisprudence is something more than the science of municipal and international law. It includes questions of Constitutional power. It investigates the authority of Government to act in



given contingencies. It inquires into the scope and extent of conceded authority, and is pertinacious in its insistence that grants to the Government shall not be enlarged by doubtful construction, and that limitations imposed shall be religiously observed.

It has been said that the lawyers of the United States form a party with no peculiar badge, a party which adapts itself to the exigencies of the times and accommodates itself to all movements of the social body; which extends over the whole community, penetrates into all classes of society, acts upon the country imperceptibly, and finally fashions affairs to suit its purposes. I may add that it is non-political. It seeks the truth and ultimately finds it. It freely investigates the teachings of Jefferson and Madison, of Hamilton and Marshall, and of all the great expounders of constitutional law. It reconciles those teachings when reconciliation is possible. It modifies or rejects them where there can be no reconciliation, and when reasonable interpretation demands their modification or rejection. The influence of this party has always been for good, and the exercise of that influence was never more important than in the solution of the problems with which present conditions require the American people to deal.

In the consideration of those questions of Federal power to which exceptional prominence has been given by the joint resolution of Congress and the Treaty of Paris, we must distinguish between Constitutional grants affecting the states and the people of the states, and those which affect our relations with the world at large. In all the changes since the Declaration of Independence, the General Government has had exclusive charge of our foreign relations. "To the rest of the world, the States composing this Union are now and have ever been known in no other than their united confederated character; abroad, to the rest of the world, they are but one. It is only at home, in their interior relations that they are many, and it is to this two-fold aspect that their motto, *E Pluribus Unum*, appropriately and emphatically applies."

The first ten amendments to the Constitution emphasize this distinction. They stand as barriers between Federal power on the one side, and the states and the people of the states on the other. No one of them abridges or attempts to abridge the authority of the General Government over foreign affairs, and that authority, as I have said, embraces all powers pertaining to the relations of the states and the people, with the rest of the world.

While the treaty of peace with Spain was yet unconsidered by the Senate, the point was made that the acquisition of sovereignty over the Philippines would impose the duty of ultimately erecting states out of their territory, on the ground that all territory acquired by the government, except such as may be necessary for coaling stations, the correction of boundaries, and similar governmental purposes, must be acquired and governed with the purpose of eventually organizing it into States suitable for admission into the Union.

The ability, learning and passionate eloquence with which this point was maintained on the floors of Congress, as well as in its general discussion throughout the country, must be recognized, as also the deep impression that discussion has made on the public mind. We may congratulate ourselves that we have now an occasion for dispassionate investigation; that we may here separate questions of power and duty from considerations of policy and expediency; that, free from the influence of partisan politics, with judicial moderation and fairness, and in the light of contemporaneous and established construction, we may examine the nature and extent of the conceded power of the government to acquire territory, and of the duty of Congress to provide for the government of the people thereof.

“The Constitution confers absolutely on the Government of the Union the power of making war and of making treaties, consequently that Government possesses the power of acquiring territory either by conquest or by treaty.”

This was the deliverance of the Supreme Court on the first occasion that Tribunal found it necessary to decide this great question. Mr. Jefferson doubted the existence of the power when he treated for the purchase of Louisiana, but it is now universally conceded.

Whether the thirteen original states became free and independent in their separate capacities, or free and independent as a union of colonies converted into a union of states by the Declaration of Independence and the successful prosecution of the War of the Revolution—in either event, those states, after their independence had been acknowledged, possessed full power to conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. The power to declare and prosecute war was vested in the general government by the constitution, without qualification expressed or implied; and the power to negotiate treaties was conferred in language equally comprehensive and explicit. As the representative of the states and of the people, the authority of the government to prosecute the war against Spain, to destroy the Spanish fleets, to capture the Spanish armies, and to hold and occupy Spanish territory, is not open to question. The right to make peace includes the right to fix the terms and conditions upon which peace shall be made; and those terms may lawfully include the cession of territory won by American valor. The war with Mexico fifty years ago and the treaty through which peace was then restored, are prototypes of the recent war with Spain and the treaty of peace with that country. A victorious conflict, followed by the cession of the vast region embraced by the Mexican States of New Mexico and Upper California, with the payment to Mexico of fifteen million dollars, and a victorious war followed by the cession of Porto Rico and the Philippine Archipelago and the Island of Guam, with the payment to Spain of twenty million dollars, complete the analogy. The treaty with Mexico, following those with France and Spain for the cession of Louisiana and Florida, provided that the inhabitants of the

ceded territory who might not choose to preserve their former citizenship should "be incorporated into the Union of the United States and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States according to the principles of the constitution."

The Treaty of Paris differs, in that it contains no such stipulation. Spanish subjects, natives of the Peninsula, may remain in the ceded territories and preserve their allegiance to the crown of Spain by making before a Court of Record a declaration of their intention to preserve it, "in default of which declaration, they shall be held to have renounced it and to have adopted the nationality of the territory in which they reside."

"The civil rights and the political status of the native inhabitants of the territory ceded to the United States shall be determined by the Congress," but, they "shall be secured in the free exercise of their religion." These treaty stipulations impose no obligations on the United States to organize the ceded territories into states preparatory to their admission into the Union.

It is said to be inconsistent with the fundamental idea of free institutions for this Government to retain territory under its *Imperial* rule and deny the people the customary local institutions. But it is not contrary to that idea to retain such territory, securing to the people all the customary local institutions they may prove themselves competent to administer, and all the civil rights that free institutions are intended to protect. In the majority opinion of the Supreme Court, in the Dred Scott case, it was said "that a power in the General Government to obtain and hold colonies and dependent territories, over which they (Congress) might legislate without restriction, would be inconsistent with its own existence in its present form." Congress will not legislate over the Philippines without restriction. In *Murphy vs. Ramsey*, (114 U. S.) it was declared that "the people of the United States, as sovereign owners of the National Territories, have supreme power over them

and their inhabitants. In the exercise of this sovereign dominion, they are represented by the government of the United States, to whom all the powers of government have been delegated, subject only to such restrictions as are expressed in the Constitution, or are necessarily implied in its terms \* \* \* for it may well be admitted in respect to this, \* \* \* that it is not absolute and unlimited. \* \* \* The personal and civil rights of the inhabitants of the Territories are secured to them, as to other citizens, by the principles of constitutional liberty which restrain all agencies of government, State and National."

The Federal Courts have not always kept in mind the distinction between the constitutional principles controlling, and the established policy of Congress in the exercise of, its powers over newly acquired territories.

Historically speaking, all the territories acquired prior to 1867 have been held and governed with the view to their ultimate erection into states of the Union, but it is equally true that the title to Louisiana, our first acquisition, was acquired for the accomplishment of a purpose altogether different. The treaty with France for the cession of Louisiana; the treaty with Spain for the cession of Florida; the treaty with Mexico for the cession of New Mexico and Upper California, and the Gadsden Treaty, each substantially provided that the inhabitants of the ceded territory should be incorporated into the Union of the United States and admitted, at the proper time, to the enjoyment of all the rights of citizens of the United States. The treaty with Russia for the cession of Alaska, negotiated in 1867, provided that Russians who might elect to remain in that country, should be permitted the enjoyment of the advantages and immunities of citizens of the United States, and be protected in the free enjoyment of their liberty, property and religion, but made no provision that those inhabitants, or any of them, should ever "be incorporated into the Union of the United States." The deliberate omission of that stipulation from that Treaty, was significant of a change of policy.

It was the virtual assertion of constitutional power in the General Government to acquire foreign territory not necessary for coaling stations, the correction of boundaries, or other similar uses, with no design or expectation of organizing it into states for admission into the Union.

If the erection of states out of the territory of Louisiana was in the mind of Mr. Jefferson at all, it was not the controlling consideration with him, or with either of his Commissioners, when the Treaty of Cession was negotiated. By his letter of April 18, 1802, to Mr. Livingston, Mr. Jefferson's motives were fully disclosed. He said :

“ There is one spot on the globe, one single spot, the possessor of which is our natural and habitual enemy. It is New Orleans, through which the produce of three-eighths of our territory must pass to market, and from its fertility it will ere long yield more than one-half of our whole produce and contain more than half our inhabitants. France placing herself in that door assumes to us an attitude of defiance. Spain might have retained it quietly for years. \* \* \* Not so can it ever be in the hands of France. The impetuosity of her temper, the energy and restlessness of her character placed in a point of eternal conflict with us, and our character, which though quiet and loving peace and the pursuit of wealth, is high-minded—despising wealth in competition with insult or injury—and energetic as any nation—these circumstances render it impossible that France and the United States can continue long friends when they meet in so irritable a position. They as well as we must be blind if they do not see this, and we must be very improvident if we do not begin to make arrangements on that hypothesis. The day that France takes possession of New Orleans fixes the sentence which is to restrain her forever within her low-water mark. It seals the union of two nations who in conjunction can maintain exclusive possession of the ocean. From that moment we must marry ourselves to the British fleet and nation.”

To provide against these threatened dangers; to escape this perplexing situation, as a necessary measure for the preservation of peace with France, and as a substitute for the entangling alliance with Great Britain, the Louisiana territory was acquired, and it would have been acquired had it been an irreclaimable desert, or worse, a fertile country densely inhabited by a race without capacity for self-government and morally and intellectually incapable of ever being prepared to discharge, or even to comprehend, the duties of American citizenship. The possession of Louisiana by France would have been an obstruction to the safety and prosperity of the United States. To prevent that obstruction, and not for the creation or admission of new states into the Union, the purchase was made.

The power to admit new states, except those erected within the original boundaries of the Union, was then an undecided and disputed proposition. It was denied by statesmen and lawyers of distinction and ability. When the territory of Louisiana applied for admission as a state, the application met with determined opposition. It was insisted that the admission would impair the dignity and reduce the relative importance of the original states, and would be in derogation of their constitutional rights.

Mr. Jefferson doubted his authority to acquire by treaty the ceded territory, without the adoption of an amendment to the Constitution. He agreed that there was no power to admit into the Union new States erected in the Louisiana territory. Writing to Mr. Nicholas, he said: "I am aware of the force of the observations you make on the power given by the Constitution to admit new states into the Union without restraining the subject to the territory then constituting the United States. But when I consider that the limits of the United States are precisely fixed by the Treaty of 1783; that the Constitution expressly declares itself to be made for the United States, I cannot help believing the intention was not to permit Congress to admit into the Union new States which should be formed out of the territory for which and under whose authority alone they were acting."

His doubts as to the constitutional power to acquire the territory were overruled by Congress. His belief that the states erected in such territory could not be constitutionally admitted into the Union did not prevail; but his doubts as to the one proposition and his belief concerning the other, effectually rebut the assumption that the treaty was made and ratified with the purpose on the part of those in authority to govern the territory to the end that ultimately it should be organized into states and admitted into the Union, under the belief that such purpose was essential to the constitutional validity of the title acquired.

Speaking against the execution of the treaty, Mr. Griswold, of Connecticut, stated the ground of his opposition thus: "The objection to the Third Article is not that the Province of Louisiana could not have been purchased, but that neither this nor any other foreign nation can be incorporated into the Union by treaty or by a law; and as this country has been ceded to the United States only under the condition of an incorporation, it results that if the condition is unconstitutional or impossible, the cession itself falls to the ground."

In the exhaustive discussion provoked by the treaty, no one claimed that the ceded territory must ultimately be incorporated into the Union as a state or states in order to sustain the constitutionality of the acquisition. In the protracted debate over the admission of Missouri, the claim was made that the people of the Louisiana territory were absolutely entitled to admission under the Treaty with France—not because the title to the Louisiana territory could not have been constitutionally acquired, except upon condition that its people should be ultimately admitted into the Union, but because the Third Article of the treaty expressly stipulated that "the inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible according to the principles of the Federal Constitution, to the enjoyment of all the rights and immunities of citizens of the United States."



In all these controversies, no one contended that the validity of the acquisition of foreign territory depended on the ultimate organization of any portion of it into a state, for admission into the Union.

Support seems to be given to the claim that the United States necessarily hold a temporary dominion over the territories, by the expression in several of the opinions of the Supreme Court, that title to the soil under tide water is, during the territorial period, held in trust for future states, thus implying that states must necessarily succeed to the possession. In the case of *Weber* (18th Wallace), the Court said: "Although the title to the soil under the tidewaters of the bay (San Francisco), was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future state." This statement was not necessary to the determination of the point decided. If intended as a statement of an historical fact, it was substantially correct. If as a declaration of Constitutional Law, it will not bear the test of investigation. The same comment may be made on *Knight's* and the other cases in which the expression was used. The decisions bearing on the nature of the dominion of the general Government over the territories were reviewed in *Shively's* case, (152 U. S.,) where it was said:

"By the Constitution, as is now well settled, the United States, having rightfully acquired the Territories, and being the only government which can impose laws upon them, have the entire dominion and sovereignty, national and municipal, over all the Territories, so long as they remain in a territorial condition. We cannot doubt, therefore, that Congress has the power to make grants of land below high water mark of navigable waters in any Territory of the United States, whenever it becomes necessary to do so in order to perform international obligations, or to effect the improvement of such lands for the promotion and convenience of commerce with foreign nations and among the several States, or to carry out other public purposes appropriate to the objects for which the United States hold the Territory."

In the absence of treaty stipulations creating it, no trust attaches to the ownership and dominion of the United States over the national territories, in favor of a state that may or may not be organized, or if organized, may or may not be admitted into the Union. The United States are in law, and in fact, the absolute owners of the national territories, and are chargeable with no trust in favor of successors, which can only come into existence at their unrestrained discretion.

The admission of new states is essentially a discretionary power. New states may be admitted by Congress into the Union. The grant implies power, not duty. Congress has the "discretion to refuse as well as to admit." It may be doubted, whether the discretion to refuse can be taken away or abridged by treaty.

It does not follow, because our recently acquired territories are never to be admitted into the Union, that Congress may legislate for them without restriction, or that they may be governed by laws and regulations inconsistent with the principles of constitutional liberty.

While the United States have supreme power over the national territories and their inhabitants, and while all the discretion incident to legislative power is vested in Congress for making rules and regulations respecting them, yet this sovereign dominion is to be exercised in harmony with the principles of free institutions. The inhabitants of the territories can demand no political rights. Practically speaking they are the wards of the general government, without political rights or political status. It rests with Congress to say whether any of the people resident in a territory shall exercise the rights of suffrage in the election of their local officers, and that right, when granted, may be freely taken away; but notwithstanding all this, "the personal and civil rights of the inhabitants of the territories are secured to them as to every citizen by the principles of constitutional liberty, which restrain all the agencies of government, state and national."

We frequently speak of certain individual or personal rights as "constitutional rights," because they happen to fall within the protecting influence of some express provision of the Constitution. It does not follow that other rights, not so expressly protected, are enjoyed at the arbitrary will of government. To take them from the people is to convert a free government into a despotism. To leave them without the sanction of the law, as administered by the courts, is to destroy the stability of free institutions. Those rights may not be enumerated, but their preservation is none the less assured. As said by Mr. Justice Matthews:<sup>1</sup>

"When we consider the nature and theories of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power."

Arbitrary power over life, liberty and property exists nowhere in a republic, not even in the largest majority. It will not exist in the government of the United States, in the exercise of its jurisdiction over the lives, liberty and property of the people of the Philippines, and in providing for their government, it will not be necessary to contravene the principles of the Constitution or to override the Declaration of Independence.

Abstract truths and general principles are to be reasonably applied to the affairs of life, especially to the affairs of government. Conditions of hardship are to be ameliorated as circumstances will permit.

Men and women were held in slavery and deprived of their civil and personal rights, in each of the thirteen colonies at the time their representatives declared "that all men are created equal; that they are endowed by their Creator with certain inalienable rights. That among these are life, liberty and the pursuit of happiness." The Constitution, which was ordained

<sup>1</sup> 118 U. S. 369.

twelve years afterwards, recognized the legal existence of slavery and provided for the arrest and return of fugitive slaves. In his inaugural address on the 4th of March, 1861, Abraham Lincoln repeated the declaration he had frequently made before his election: "I have no purpose, direct or indirect, to interfere with the institution of slavery in the states where it exists. I believe I have no lawful right to do so, and I have no inclination to do so."

After the Civil War had progressed a year and a half, he wrote: "If there be those who would not save the Union unless they could at the same time save slavery, I do not agree with them. If there be those who would not save the Union unless they could at the same time destroy slavery, I do not agree with them. My paramount object in this struggle is to save the Union, and it is not either to save or destroy slavery. If I could save the Union without freeing any slaves, I would do it; and if I could save it by freeing all the slaves, I would do it; and if I could do it by freeing some and leaving others alone, I would also do that. What I do about slavery and the colored race I do it because I believe it helps to save this Union, and what I forbear, I forbear because I do not believe it will help to save the Union. I shall do less whenever I believe what I am doing hurts the cause, and I shall do more whenever I believe doing more will help the cause."

Mr. Lincoln treated the freeing of the slave as subordinate to the preservation of the Union. A great contest was being settled by the arbitrament of war, and, in his opinion, the slave could await the progress of events for the application on his behalf, of the principle that liberty and the pursuit of happiness are among the inalienable rights with which men are endowed by their Creator.

This leader of the people, when he wrote this letter to Mr. Greeley, was as much devoted to the cause of freedom, and as firm a believer in the natural rights of the enslaved man, as when, four years before, in his speech at Lewiston, he read the Preamble to the Declaration of Independence, and added:

“ This was their majestic interpretation of the economy of the universe. This was their lofty and wise and noble understanding of the justice of the Creator to his creatures. Yes, gentlemen, to all his creatures, to the whole great family of man.”

The declaration as to the inalienable rights of man is none the less true because Slavery lived under the American Union from 1776 to 1866, and only ceased to exist at the end of a war in which freedom came, if not as a military necessity, as a measure deemed almost indispensable to military success.

Commenting on the incompatibility of slavery with the inalienable rights of man, Henry Clay used the language of practical statesmanship, when he said: “ It is a general declaration in the act announcing to the world the independence of the thirteen American colonies, that all men are created equal. Now, as an abstract principle, there is no doubt of the truth of that declaration, and it is desirable in the original construction of society and in the organized societies to keep it in view as a great fundamental principle. But then I apprehend that in no society that ever did exist, or ever shall be formed, was or can the equality asserted among the human race be practically enforced and carried out.”

This principle cannot be literally enforced in the adjustment of our relations with the Philippines, but the declaration is to be kept in view as a great fundamental doctrine, controlling, as far as circumstances will permit, the organization and preservation of orderly administration, though its literal application may for the time be denied, as our fathers denied it, when it leads to anarchy and lawlessness, or renders stable and orderly government impossible, or increases the difficulties in the way of establishing liberal institutions.

To substitute the control of the United States for the control of Spain in the Philippines; to introduce American institutions in the room and stead of Spanish methods; to replace absolute and unlimited power with the restraining principles of Constitutional liberty, will not be to contravene this great

fundamental principle. It will be the first step in securing to the inhabitants of those distant countries the right to life, liberty and the pursuit of happiness. It will be to the people of these Islands the dawn of a morning which in God's providence will ripen into a day of deliverance from tyranny and oppression at the hands of either a foreign master or a homebred despot.

To secure the inalienable rights of man, governments are instituted, deriving their just powers from the consent of the governed. Whenever the form of government becomes destructive of these ends, it is the right of the people to alter or abolish it and to institute a new government, laying its foundations on such principles and organizing its powers in such form as to them may seem most likely to effect their safety and happiness. I have not observed the use, in its completeness, of this clause of the Declaration of Independence in the arguments against the right and power of the United States to accept sovereignty over the Philippines. To the want of consent by the Filipinos much importance is given. Their want of the opportunity to express consent receives no consideration. We cannot presume that the offer of law and order through stable government to a people who have never enjoyed the blessings of either, would be rejected, could they be afforded the opportunity to consider the offer and freely to express their will. Insurgent chieftains may challenge our admiration and arouse our sympathy, but they and their followers cannot be permitted to decide for eight million people whether they are willing to accept orderly government administered under the restraints of American Institutions. Our forefathers did not take up arms against the British King for the mere assertion of the principle that governments derive their just powers from the consent of the governed. Their claim was, that whenever any form of government becomes destructive of the ends of government, it is the right of the people to alter or abolish it. This fundamental right was to be enforced "when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce

them under absolute despotism," and the British King was arraigned for repeated injuries and usurpations, all having in direct object the establishing of an absolute tyranny over the American colonies.

American dominion in the Philippines will destroy none of the ends of government; will disregard no one of the inalienable rights of man; will sanctify no abuse or usurpation, but will terminate the despotism under which their people have lived for more than three hundred years.

The United States did not ask the consent of the inhabitants of Louisiana, or Florida, or New Mexico, or Upper California, to the cessions made by France and Spain and the Republic of Mexico, nor was it understood when we assumed sovereign jurisdiction over those peoples, that we were violating the principle that Governments derive their just powers from the consent of the governed. Orderly government faithfully administered in the interests of the governed superinduces consent. New Mexico and Arizona have been governed as Territories more than fifty years. Congress has governed the District of Columbia more than a hundred years, yet the Declaration of Independence is neither dead nor sleeping. It remains the thought and spirit of the Constitution and continues to command the reverence of all our people.

The right to withdraw consent, and to form independent national relations was put to the test by the seceding states in 1861. The effort was supported by armies such as the world had never seen, by statesmanship, generalship, heroism, courage and devotion which challenged universal admiration; but the experiment failed because the majority of the people of the United States did not concede the proposition that consent can be withdrawn, except for sufficient cause, and denied the existence of any such cause to the states of the South. Henry Winter Davis, a lawyer and statesman of exceptional ability and a Union man of pronounced convictions, in a speech delivered in the House of Representatives in March, 1864, stated the position of the seceding states thus :

“What is the nature of the case with which we have to deal? the evil we must remedy? the danger we must avert? In other words, what is that monster of political wrong which is called Secession? It is not, Mr. Speaker, domestic violence within that clause of the Constitution, for the violence was the act of the people of these States through their governments, and so the offspring of their free and unforced will. It is not invasion in the meaning of the Constitution, for no State has been invaded against the will of the government of the state by any power except of the United States marching to overthrow the usurpation of its territory. It is, therefore, the act of the people of the states carrying with it all the consequences of such an act. And, therefore, it must be either a local revolution which makes them independent and makes of the United States a foreign country, or it is a usurpation against the authority of the United States—the erection of governments which do not recognize the Constitution of the United States, which the Constitution does not recognize, and, therefore, not the Republican governments of the States in rebellion. The latter is the view which all parties take of it.”

Secession was the free act of the people of the seceding States, the offspring of their free and unforced will. It was the formal withdrawal of consent to the authority of the general Government, manifested in the most unmistakable way; yet the deliberate judgment of the dominant majority of the people of the United States was, that their brethren of the South could be lawfully constrained by force to submit to Federal authority, and that they could be so constrained, within the reasonable application of the maxim that the just powers of Government spring from the consent of the governed.

The Filipinos have never been free. For nearly three hundred and fifty years they have lived under the arbitrary control of the Spanish Crown. In submitting to the authority of the United States they surrender no privilege or immunity. It cannot be that their right to a Government to which they give their consent is more sacred than was



the like right to the people of the seceding States. It has been judicially declared that we have "An Indestructible Union of Indestructible States." The war against the armies of the South was fought to a successful conclusion, because the majority believed it more important to preserve that Union, than to accede to the literal application of an abstract principle, which, however correct, logically led to its dissolution.

Government is not an abstraction. It is the reasonable application of correct principles to conditions which, though they cannot be wholly overcome, may be so molded as to better subserve the interest of justice, peace and order. In the language of Burke "The rights of men in Governments are their advantages; and they are often in the balance between conditions of good; in compromises sometimes between good and evil, and sometimes between evil and evil. Political reason is a computing principle; adding, subtracting, multiplying, and dividing—morally and not metaphysically or mathematically—true moral denominations."

By the exercise of political reason our Constitution was ordained and a more perfect Union established. In the light of political reason our affairs have been administered in the past, and political reason, if we patiently follow its dictates, will enable us to solve the problems now before us, in harmony with the limitations of the Constitution and in practical accord with the great principles set forth in the Declaration of Independence.

All experience teaches that consent follows good government. When, in 1763, Great Britain became the master of the vast domain on the other side of Niagara and the Lakes, of the sixty-five thousand Canadians then inhabiting that country, probably not one consented to the change of sovereignty. Difference in language and religion, and the antipathies incident to the fact that in those days the French and English were traditional enemies, increased the difficulties of converting unwilling subjects into contented people, yet twenty-two years

afterwards, French-Canadians, fighting by the side of English soldiers, repelled the invading armies of Montgomery and Arnold, and steadily rejected all overtures looking to their deliverance from British authority.

In point of time, little more than a generation has passed since the disturbing question of Secession was settled by an appeal to arms. The recollections of the Civil War and its horrors still linger, the bitter memories of the days of Reconstruction are yet alive with those of us from the South whose heads are whitened by the snows of time; but in all this broad land, there is to-day a common feeling, a universal agreement, that we are living under a Government of unreserved consent. When we look across the inland seas to the North and see the popular sentiment of the Dominion of Canada manifesting itself through the leadership of a French-Canadian; when we look abroad in our own country and see the soldiers of the Confederacy and their sons assisting as Legislators to frame our laws, and as Judges to administer them, we cannot doubt that the establishment of orderly government in the Islands of the Philippines will secure the consent of their people to the just and benevolent sway of the American Republic.

An objection much insisted on is the impolicy of conferring on the Asiatic inhabitants of the Philippines the right of American citizenship, with its attendant advantages in the American states and territories. The treaty does not purport to secure them that right. On the contrary, it remits the civil rights and status of that people to the discretion of Congress.

The joint resolution that passed the Senate on the 14th day of February last, but which was not considered by the House of Representatives, declares "that by the ratification of the Treaty of Peace with Spain, it is not intended to incorporate the inhabitants of the Philippines Islands into citizenship of the United States; nor is it intended to permanently annex said Islands as an integral part of the territory of the United States; but it is the intention of the United States to

establish on said Islands a government suitable to the wants and conditions of the inhabitants of said Islands, to prepare them for self-government, and in due time to make such disposition of said Islands as will best promote the interests of the citizens of the United States and the inhabitants of said Islands."

The general meaning of this resolution may not be clear, but it is certain that the senators who supported it do not understand the Treaty to contemplate the incorporation of the Philippine people into American citizenship, or the permanent annexation of the Islands as an integral part of the territory of the United States.

The Treaty of Paris makes no provision for the incorporation of the people of the Philippines into the Union, or for their enjoyment of the privileges, rights or immunities of citizens of the United States. It omits the stipulation of the Russian Treaty ceding Alaska, that the civilized inhabitants of that country "shall have the immunities of citizens of the United States."

The native inhabitants of those countries are to have their civil rights and political status determined by Congress, and the power of Congress is unlimited, so far as the Treaty of cession is concerned, except that the inhabitants are to be secured in the free exercise of their religion.

It does not follow because the civil rights and political *status* of the Philippine people are to be determined by Congress, that the power of Congress over them is omnipotent. Congress will exercise legislative power practically free from restraint by the Treaty, but subject to the restraints of constitutional institutions.

In defining the legislative function, or rather the power of Parliament as a legislative body, Lord Coke said :

"It hath sovereign and uncontrollable authority in the making, confirming, enjoining, restraining, abrogating, repealing, reviving and expounding of laws concerning matters of all possible denominations."

This is legislative power in its completeness and perfection. Such power has never existed in the legislative department of any of the American states, and has never been claimed for Congress. For the common defense against foreign enemies, and for the promotion of the general welfare, when affected by our external relations, as distinguished from our domestic concerns, legislative power in Congress is as comprehensive and complete as the nature of its exclusive jurisdiction requires it to be, within, of course, the scope of the authority the states had the power to grant. As free and independent states they each had full power to levy war and conclude peace, and do all other things that independent states may of right do. Their power as to war and peace, and as to foreign affairs, they freely and fully granted to the general government.

The declaration of war against and the treaty of peace with Spain were within the expressly granted powers of that government. In terminating the war by the treaty of peace, the government of the United States could do any act or thing not in conflict with the Constitution, which any other independent state might have done, unless the rights of the states in these respects were diminished by the formation of the more perfect union through the adoption of the Constitution.

Any other independent state might have destroyed the Spanish fleet and occupied the city of Manila with the right to treat for the cession of the territory in question, and for jurisdiction over the native inhabitants, and would have been free to say that those inhabitants should not be incorporated into its body politic or made citizens with rights, privileges and immunities equal to those enjoyed by the inhabitants of such independent state.

If the Union had fallen to pieces as it might have done, had not the Articles of Confederation been superseded by the Constitution, and had the State of New York, in that event, preserved her separate existence as a sovereign state, and been the adversary of Spain in the recent war, who will say that New York might not have accepted the cession of the Spanish terri-

tories and contracted for the allegiance of their inhabitants without incurring the obligation of converting those inhabitants into citizens, and of ultimately admitting them to share in the administration of the home government?

Possessing this broad and comprehensive power, the states delegated it to the general government. As the recipient of this power the United States may exercise it as completely as it might have been exercised by the states that conferred it, and in and about matters affecting primarily our foreign relations, they may do all acts and things which any other free republic might do under like circumstances and conditions.

Independent republics have equal rights in the prosecution of just wars with other nations whatever may be their forms of government. If it be necessary or expedient for a republic, in its justifiable self-defense, which comprehends the support and prosecution of its rights, to overrun the territories of its enemy, it may lawfully overrun and occupy them, and at the close of a successful war may indemnify itself for the expense and damage sustained, by requiring the cession of such portions of the conquered territory as justice and expediency may reasonably demand. It may require the inhabitants of the conquered country to submit to reasonable and just rules prescribed for their government. It may unite the conquered province to its own state, or it may suffer it to retain its own form of government and treat it as a province or dependency.

These are among the inherent rights of nations, and they were recognized rights when the King of Great Britain acknowledged the United States, "to be free, sovereign and independent states."

It may be admitted that we ought not permanently to annex a country whose inhabitants are incapable of attaining capacity for self-government, and the climate of which forbids the migration of Americans or Europeans in numbers sufficient eventually to control political and social conditions.

I do not claim that the government of the United States is specially adapted to a colonial policy, or that its methods of

administration qualify it, in any marked degree, to hold and govern dependencies in any portion of the world, proximate or remote. On the contrary, it is of doubtful expediency to hold colonies or dependencies at all, and such holding can only be justified by necessity. When, however, duty admits of no escape without the sacrifice of national honor or dignity, the necessity exists.

In the division of powers between the general and state governments, those delegated to the general government affecting the direction and control of domestic affairs are enumerated and specified, and to those grants the rule of strict construction is reasonably applicable. It is not so in regard to the powers affecting and controlling our relations with the outside world. It was truthfully said by Mr. Calhoun that "so imperious was the necessity of the Union and a common government to take charge of their foreign relations that it may be safely affirmed not only that it led to the formation, but that without it the states never would have been united."

If it be insisted that these plenary powers do not apply to outlying countries after they have been brought under the dominion of the United States by treaties of cession, it must also be conceded that the limitations of the Constitution, in the absence of Congressional action, do not extend to such countries.

In January, 1849, an amendment was offered to one of the appropriation bills pending in the Senate of the United States, to "extend the Constitution of the United States" to the territories recently acquired from Mexico. Discussing that proposition, Mr. Webster said:

"Let me say, that in this general sense there is no such thing as extending the Constitution. The Constitution is extended over the United States and over nothing else, and can extend over nothing else. It cannot be extended over anything except the old States and the new States which shall come in hereafter when they do come."

Controverting this broad statement, Mr. Calhoun replied that the Constitution "is the supreme law, not within the limits of the States of this Union merely, but wherever our flag waves—wherever our authority goes, the Constitution in part goes. Not all its provisions certainly, but all its suitable provisions," but in the same connection, Mr. Calhoun declared that "the territories belong to us—they are ours, that is to say, they are the property of the States of the Union, and we, as the representatives of these States, have the right to exercise all that authority and jurisdiction which ownership carries with it."

The decisions of the Supreme Court are in harmony with the reasoning of Mr. Webster, but, if Mr. Calhoun's theory be the correct one, we come to this, that not all the Constitution, but only its "suitable provisions" extend to the territories, so, that, when we come to make needful rules and regulations for their Government, Congress must decide in each case which of the provisions of the Constitution are suitable to the particular territory; its geographical situation, its past history, its social and political conditions, each and all receiving due consideration.

The discretion of Congress in this respect is unrestrained, except that it is to be exercised in consonance with "those great principles which are intended as general securities for public liberty."

If this be an imperial power, it is not the imperialism of the autocrat, but that which pertains to the empire of which Mr. Jefferson spoke, when he said: "I am persuaded no Constitution was ever so well calculated for extensive empire and self-government" as that of the United States. It is a power first employed by Mr. Jefferson in the purchase of Louisiana, and ever since continuously exercised in the government of the National territories. It is open to abuse, as is every great power of government; but faith in the virtue, magnanimity, and justice of the American people, encourages the belief that it will always be exerted to exemplify the fact that the imperial-

ism of the American Republic, is its capacity and disposition to defend the weak against injustice and oppression wherever its flag may float, rather than an attribute of arbitrary and irresponsible power.

One other phase of the Philippine question deserves passing consideration. The relations of the United States to the insurrectionary movement in those countries have been compared to those of France and the United States at the close of our Revolutionary War, the point being made that France could have as consistently treated with Great Britain for the cession of the American States as the United States could treat with Spain for the cession of the Philippine Archipelago. The difference in the two situations is as palpable as it is radical. The American colonies did not commence their war with Great Britain after France had practically broken down the British power in North America. They did not organize their military forces under the protection of French fleets and armies. Two years before French intervention their independence had been solemnly declared, and before a French ship or a French soldier took part in their contest with the mother country, the independence of the United States had been recognized by France by a treaty of alliance in which it was stipulated and declared that :

“ If war should break out between France and Great Britain during the continuance of the war between the United States and England, His Majesty and the said United States shall make it a common cause and aid each other mutually with their good offices, their counsels and their forces according to the exigence of conjunctures as become good and faithful allies,” and that :

“ The essential and direct end of the present defensive alliance is to maintain effectually the liberty, sovereignty and independence absolute and unlimited of the United States as well in matters of government as of commerce.”

It would be a waste of time to amplify the impossibility of France, in the face of that treaty, negotiating with Great Britain for the cession of the American states.



In the prosecution of a just war against Spain the United States made the Philippines a point of attack. No organized or formidable insurrection was then in progress in those countries. Aguinaldo was voluntarily absent. He did not return until after the destruction of the Spanish fleet and after the Americans had become practically masters of the local situation. The presence of American ships and soldiers protected him and his followers from Spanish attack. Advantage was taken of conditions the Filipinos had little or no hand in bringing about, for the organization of the insurrectionary army and for the establishing of, so far as it has been established, the revolutionary government. Whatever strength the insurgents were able to exhibit, and whatever advantages they may have gained over the Spanish army of occupation, are directly traceable to a war which the United States commenced with no direct view, if any view at all, to the amelioration of the Philippine conditions. Aguinaldo's government has not to this day been recognized by any country. The American commanders notified him from time to time of their want of authority to recognize it. He and his troops were not allies of the United States. They received no recognition or countenance from the American commanders other than such as the commander of an invading army may, without compromising the future action of his own government, extend to dissatisfied and insurrectionary subjects of the government against which the war is being prosecuted.

The assistance rendered by Aguinaldo and his forces to the American army and navy in no wise affected the result of the campaign. The surrender of the Spanish troops at Manila was inevitable. The presence there of the insurgent army was an embarrassing, if not a disturbing incident. It eventually became a menace to the lives and property of the inhabitants of Manila, whom the Americans, after the surrender of that city, were under the highest obligations to protect.

The revolutionary government represents at the utmost less than one-fourth of the inhabitants of the islands, and, as to them,

it is a government of force rather than consent. It had received no recognition of its belligerency from either Spain or the United States, at the time the protocol was signed, or when the treaty was negotiated, or at the time of its ratification. The United States were under no obligation to treat with the insurgents concerning their future *status* in the invaded country, and, in contracting with Spain for the permanent cession of the Philippines, our government exercised a right absolutely defensible in morals and in law.

When Aguinaldo and his chieftains determined to resist the transfer of the Philippine allegiance from Spain to the United States, they elected to continue a war which the Spanish government had solemnly renounced and abandoned. They tendered an issue which the United States could not refuse, and doing so, they assumed responsibility for all the evils that have come, or may hereafter come to the Philippine people from a contest, which on their part is as inexcusable as it is manifestly hopeless.

The inhabitants of the Philippines had been in a chronic state of insurrection for many years before December, 1897, when it was agreed, by Aguinaldo and his associate leaders, that they and their followers should lay down their arms and submit. The Spanish authorities agreed that a general amnesty should be granted and that all necessary governmental reforms should be made, and that the conqueror should pay, by way of indemnity, to the conquered the sum of \$800,000 in money. On Christmas day, 1897, the Governor General telegraphed to Madrid: "It is with great pleasure I have to communicate to you that the principal leaders of the insurrection have laid down their arms and cheered three times for Spain, the King, and Peace." It is related by an English writer that this peace cost Spain \$2,000,000, of which \$800,000 went to Aguinaldo and his immediate followers, who agreed to change their residences to Hong Kong; that \$400,000 went to the lesser insurgents and to deserving Spanish officials; and that as to the remaining \$800,000 the account is yet to be rendered.

At the time of this convention it is manifest the Filipinos were not contending for Philippine independence, but for the institution of better government, and other desirable ends, all of which were compatible with the indefinite continuance of Spanish sovereignty. Aguinaldo claims that *he* complied with the peace agreement, but he charges that the Spanish government did not observe a similar conduct, and that its failure to do so gave cause for the uprising of which he is now the chief. Independence was not seriously contemplated until after the prestige and power of Spain had been broken by Dewey's victory nor until after the United States had determined to follow up their naval advantage by the armed occupation of the capital city of the Archipelago and such other points as the exigencies of the war might render advisable.

Under these conditions the United States would not have submitted to the sale by Spain of the Philippines. Their purchase by a neutral power would have been regarded by our government as an unfriendly act, not to be tolerated. Spain could not have defeated the American invasion by the recognition of the independence of the insurgents, and it was in disregard, if not in contempt of the rights of the United States for the insurgent chieftain, under the circumstances, to proclaim an independent government. It was an attempt to utilize the victories the United States had won in the war with Spain for the accomplishment of an end to which they were in no wise committed, and which honor and dignity did not require, but in view of the action of Aguinaldo and his associates, forbade, them to respect, when they came to treat with Spain.

Having overthrown the authority of Spain against which the Filipinos, for countless generations, had vainly struggled, we sought to give them free institutions under a government able to maintain, and pledged to uphold, peace, justice and order. We offered not principalities, or powers, or largesses, or subsidies, to ambitious chieftains, but protection to the lives, liberty and property of the people,

and it was indefensible and wicked in those disappointed chieftains to turn their arms against us. There can be but one ending to the unfortunate contest. The sovereign authority of the United States will be established, and under and through their beneficent control, peace will take the place of war, order will supplant lawlessness, and justice and mercy prevail, where force and fraud and cruelty once seemed to have their perpetual abiding place.

Intimately connected with these propositions of national authority and national morality are questions of policy and expediency of the gravest importance and most absorbing interest. They are, however, without the limits I have prescribed, and I shall not trespass on your patience to consider them.

We have extended our domain into and across the Pacific, but we have not changed the nature of our government, or the character of our institutions. Ours is still a Union of American states and will so remain to the end. The bond of Union by which the states are held together was ordained and established as the "Constitution for the United States of America." Our policy, our traditions, our interests and our glory alike forbid the admission into the Union of any other than a North American state.

It does not follow, however, that we are to shrink from the full and faithful discharge of the new duty which we find ourselves under to the civilized world, and more especially to the distant islands of the Eastern Seas. That duty was not of our seeking. It came as the culmination of events which human agencies could not control or direct. We would gladly escape it if escape were possible, but recognizing that there is no honorable avenue of retreat, we take it up, appreciating all its difficulties and responsibilities, with the fixed purpose of discharging it to the uttermost. We do this with no desire for indefinite expansion; with no design of establishing a general colonial policy; but with the earnest hope that after our national authority shall have been established, and established it will

be, the people of the Philippines may show themselves capable of upbuilding and maintaining a local government of their own. If failure attends our efforts, it will be but another instance of defeated hopes and disappointed expectations. But if by holding up the hands of those who aspire to orderly and stable institutions, we shall open the way to a home government, under which individual rights will be respected, domestic tranquillity insured, and life, liberty and property protected, by the fixed and regular administration of just and equal laws, we shall give another and striking evidence of man's capacity for self-government, and, over and above all considerations of pecuniary or commercial advantages, however great they may be, we shall be compensated for the blood and treasure we have expended and may expend, by the consciousness of having secured to the inalienable rights of man a wider field, and to free institutions the opportunity to extend their blessings to the human family in a quarter of the world in which despotism has had its undisputed reign from the earliest period of recorded time.



# THE STATE PUNISHMENT OF CRIME.

BY

SIR WILLIAM R. KENNEDY,

A JUSTICE OF THE ENGLISH HIGH COURT OF JUSTICE.

When I had accepted the invitation with which you have honoured me, it was with no little anxiety that I proceeded to the choice of a subject for my address, although I felt assured beforehand of the courteous indulgence of my audience, and I was much eased in mind when your distinguished president, the American Ambassador in London, upon my telling him that I proposed to devote my paper to the "State Punishment of Crime," was pleased very warmly to approve.

I have taken this subject for several reasons. In the first place it is one to which, in its practical bearings at any rate, every judge gives of necessity much careful study. In the second place, it is one of such deep and abiding interest to all members of a civilised community, that he who discourses on it earnestly will, I feel sure, be forgiven in respect of any literary imperfection. Thirdly, I knew that in parts of this great country the treatment of convicts has in a very remarkable manner engaged public attention, and has been made the field of bold, elaborate, and, as I trust, very fruitful experiment. I greatly hope that, before my too short stay here has ended, I shall have had the opportunity of visiting two at least of the institutions where the experiments are being carried on. I have already had the pleasure of visiting the great Reformatory at Concord. Lastly, while no one hails more joyfully than I the prospect of advance and improvement in the administration of the criminal law, I am constrained by much that I hear and read now-a-days to deem it not inopportune, before a great assembly of men who must possess a powerful influence without, as well as within, the

profession of the law, to urge the importance of steadfastness in upholding, throughout every change, a right idea of the punishment of crime.

The term "crime," in its widest signification denotes every act or omission which is punished by the law. Some of the things which the law enjoins or prohibits under pain of punishment bear, in themselves, no essential relation to morality. Such, for example, are some matters of state regulation in regard to public order, health, highways and revenue. Disobedience to the law in these matters is immoral only because it is morally wrong to break the positive law of the country in which we are. As to this kind of "crime" I desire to make only a few remarks before passing away from it. I think it would be desirable, although probably it would now be difficult, to create in the language of the law a classification of crime which would pointedly distinguish punishable acts which are essentially immoral as well as illegal, from punishable acts which are immoral only in so far as they involve violation of our duty to obey the law of our country.

The division of indictable "crime" in English law, into felonies and misdemeanors does not represent, and did not arise from any purpose to represent, any such classification. Some misdemeanors (such, *e. g.*, as the crime of obtaining money by false pretences) are as essentially immoral acts as any felony.

The French classification of 'contraventions,' 'delits,' and 'crimes,' is an effort to effect that which I desire. I say, I desire it, because it appears to me that to include under one comprehensive title of 'criminal' the man who refuses to serve the office of petty constable, and the man who debauches a young child, must tend, by the obliteration of moral distinctions, to dull the proper sensitiveness of the public conscience. The terms 'crime' and 'criminal' ought, I suggest, technically as well as in popular language, to "connote," as the late Mr. Justice Stephen puts it, "guilt of a more serious character than that which is involved in a mere infringement of the law as



defined by Austin." For a similar reason the state should, I think, be chary of additions to the criminal law, involving the use of criminal procedure, in order to enforce arbitrary, though doubtless wholesome, rules of civic conduct.

I agree in his remark, upon this point, with M. Louis Proal, President of the Court of Appeal at Riom, in his work "*Le Crime et la Peine*," published this year at Paris,—a work to which I desire to express my sense of obligation,—when he writes (p. 498):

"J' estime que le législateur doit être sobre d'incriminations nouvelles, que la sanction pénale ne doit être édictée que lorsque l'intérêt social à sauve-garder est important, et qu'il ne peut pas être suffisamment protégé par la sanction civile."

On the other hand, where an act is immoral and injurious, the state may do a good deal towards stimulating and maintaining a healthy public sentiment of detestation, by affixing to it the infamy of crime, as, for example, in the case of corrupt practices at elections.

My chief purpose, however, to-day, is to submit to you some observations respecting the principles and the practice of the punishment of conduct which is essentially immoral as well as illegal—the criminal conduct which peoples our prisons and reformatories. In their condemnation of this, morals and law are absolutely harmonious, although the sphere of law and the sphere of morals are not identical in extent. With the conception in the individual mind of wicked intents or wicked desires, not manifested in action, the criminal law has no concern. "It can be applied," in the language of Mr. Justice Stephen, "only to definite overt acts or omissions capable of being distinctly proved, which acts or omissions inflict definite evils either on specific persons or on the community at large."

The operation of the criminal law is, indeed, narrower even than this sentence would indicate. The punishment of the definite and socially injurious acts of the adulterer and the profligate (except where female childhood has to be protected) is in our system left to the lash of the individual conscience

and the censure of public opinion. Nevertheless, according to Bentham's image, although the circles of law and morals are not conterminous, they are concentric. Legal responsibility has its basis in moral responsibility. The righteousness of the punishment of crime depends upon the moral culpability of the criminal. "You can never separate the idea of right and wrong from the idea of punishment, without an infinite degradation of the latter conception."<sup>1</sup> The freedom of the will, the liberty of choice between right and wrong, the spiritual power of resisting and controlling impulses to greed and violence and lust are immortal truths which gird Justice with the sword. For the idiot and the insane—because they lack such liberty and power—that sword remains within its sheath. There is, no doubt, a comparatively modern school of 'Criminal Anthropology' which teaches a different doctrine. Its adherents hold, apparently, that moral liberty has no existence and that a moral evil is the result of physical fault. The criminal is, apparently, to be treated as the hopeless product of bodily anomalies—the doomed inheritor of a cerebral mechanism which must work evil—or the victim of "atavism," the supposed recrudescence of the wickedness of a prehistoric or even prehuman ancestor. We are given imposing classifications of criminals into "curable criminals" and "incurable criminals," or into "born criminals" and "occasional criminals" and "criminals through passion."

These theories, however unquestionable the learning, and the ability which have been enlisted in their support, appear to me to be as unsound as they would be unsafe if put in practice. "Le monde morale s'écroule, si la liberté est une illusion."<sup>2</sup>

They spring, one may venture to think, from a partial and imperfect view of humanity; from an exclusive, or almost exclusive, consideration of its physical side. I attribute in large measure the vogue which they have gained, to the curious

<sup>1</sup> The Rt. Hon. Sir E. Fry on Inequality in Punishment. *The Nineteenth Century*, 1883, p. 528.

<sup>2</sup> Proal, *Le Crime et la Peine*, p. 15.

co-operation of certain modern forces: on the one hand, the materialistic trend which the wondrous achievements of science in this century have given to thought, and the attractiveness which these achievements have lent to speculations which come to us in the garb of science; on the other hand, the development of humanitarianism, spurred sometimes to an immoderate zeal in finding excuse for crime by a righteous aversion to the indiscriminate severity of a by-gone age.

But, indeed, the evidential value of the phenomena upon which these theories have been built, appears, according to the judgment of highly competent critics, to be open to most serious question. A catalogue of contradictory views will be found in the sixth chapter, (entitled "*Le Contradizioni dell' Antropologia Criminale*") of the first volume of Dr. Napoleone Colajanni's book "*La Sociologia Criminale*" (Catania, 1889).

Whilst I was writing this paper, I received from a friend who is a great authority on all matters connected with the brain, this interesting statement:—"In regard to the existence  
"of any special characteristics of the brain of habitual criminals,  
"you doubtless know the statements of Professor Benedikt,  
"viz:—that the brains of habitual criminals are characterised by  
"a defective gyrus development, and by a tendency of the main  
"fissures to become confluent, instead of remaining, as in the  
"normal brain, more or less independent of each other. He  
"also professes to have discovered in the specimens of criminal  
"brains examined by him, a retrograde type, that is, that they  
"exhibit many anatomical features which belong to the lower  
"mammals, and which are not present in the normal human  
"brain. Professor Benedikt's statements have been criticised  
"adversely by many subsequent enquirers, amongst others by  
"Professor Donaldson of America, and, in particular, by Pro-  
"fessor Lucchini of Parma, who has made a most exhaustive and  
"elaborate examination of the brains of criminals (*Cervelli di  
"Delinquenti, Parma, 1895*). The only thing, I think, which  
"appears to be well established is, that more anomalies are  
"found in the brains of habitual criminals than in those of nor-

“mal individuals; but there does not appear to be any constant  
“feature which distinguishes the criminal from the normal brain,  
“or any configuration or characteristic which indicates a dis-  
“position to any particular form of crime. I should myself be  
“inclined to think that the habitual criminal is the resultant of  
“a great many factors rather than the necessary consequence of  
“any specific cerebral configuration.”

A very suggestive pamphlet written by Dr. Austin Flint, of New York, was published at Concord in 1895. This is a reprint of an address delivered by him as President to the New York State Medical Association. I venture, respectfully to dissent from some of the learned writer's opinions and inferences. But, at page 13, he concludes a criticism of the Lombrosist doctrine that a criminal without certain physical abnormalities is not a born criminal, with the assertion that physical abnormalities even with criminal ancestry, are never in themselves absolute evidence of criminality; and then, in two admirably terse and clear sentences, he proceeds to demolish (as it seems to me) the evidential basis of the theories to which I have referred :

“The weakness in the position that there are any physical  
“tests for criminality is two-fold. There is no fixed normal  
“standard of comparison; and the exceptions in which physical  
“peculiarities assumed to be characteristic of criminality exist  
“in normal individuals are very frequent.”

Surely the truth is that, while it may be supposed that there are physical influences, such as the still obscure and mysterious operation of heredity, which may affect the human temperament, a sane man is not merely a collection of organs of which thought, feeling and will are some of the functions, but is an intelligence with organs; a composite being, in whom spirit, soul and body act and react upon each other, but who is capable of moral choice and self control; for whose criminal wrong-doing, Justice, while she gives due weight in the degree and mode of punishment to every proved circumstance of extenuation, such as is found, sadly often, in the bad social environment of the criminal, can

never accept a plea of irresponsibility. The ancient wisdom of the son of Sirach appears to me to be true wisdom still: "He (the Lord) Himself made man from the beginning and left him in the hand of his own counsel. If thou wilt, thou shalt keep the commandment; and to perform faithfulness is of thine own good pleasure. Before man is life and death; and whichsoever he liketh it shall be given him."<sup>1</sup>

"'Tis in ourselves," says Shakespeare by the mouth of Iago, "that we are thus or thus. Our bodies are our gardens, to the which our wills are gardeners; so that, if we will plant nettles, or sow lettuce; set hyssop, and weed up thyme; supply it with one gender of herbs, or distract it with many; either to have it sterile with idleness, or manured with industry; why, the power and corrigible authority of this lies in our wills."<sup>2</sup>

What then is the central, the dominant idea of the State Punishment of Crime? Certainly it is not revenge. I cannot accept Dr. Flint's assertion, in the pamphlet already mentioned, that the existing system of criminal law is based upon the ancient idea of vengeance and retaliation. It is true, I suppose, as a matter of ancient history, that the institution of chastisement solemnly and deliberately adjudged and inflicted upon the wrong-doer by the sovereign power of the community, was in a sense the outcome as well as the supplanter of the savage and irregular reprisals which had before been wreaked by the injured party himself, or by his family or clan. Perhaps a trace of this source of punishment still lingers in what has been called the litigious form of our criminal procedure. But, whilst revenge may have been historically the parent of punishment, yet "punishment by its transfer from the injured party to the judge has struck a deeper and a purer spring of righteousness in man's nature and now draws from it alone its true supply."<sup>3</sup>

<sup>1</sup> Ecclesiasticus, C. 15. Vss., 14, 15, 17.

<sup>2</sup> Shakespeare, *Othello*, Act 1, Sc. 3.

<sup>3</sup> Rt. Hon. Sir E. Fry, "Inequality in Punishment." *The Nineteenth Century*, 1883, p. 522.

Is, then, the central and dominant idea of punishment the reformation of the criminal? Is it the prevention of the repetition of his crime by him? Is it the prevention of the commission of crime by others, either directly through the deterrent effect of the example of his punishment, breeding in them fear of the like pain if they commit the like crime, or indirectly, through the creation, in the public mind, of an abhorrence of the act which, if proved, subjects the doer to open shame?

The 'preventive' principle has been put forward as the governing principle by great thinkers such as Paley, Bentham and Brougham. Its assertion from the Bench in old days is well illustrated by the story told by my friend Sir Harry Poland in an article written by him in the *New Review*, June, 1893, p. 628. A horse stealer, on being asked what he had to say why judgment of death should not be passed upon him, said it was hard to hang a man for only stealing a horse. The judge replied "Man, thou art not to be hanged only for stealing a horse, but that horses may not be stolen."

The Reformatory principle is a younger claimant of supremacy. It has emerged into prominence in quite modern times, through the spread of the philanthropic spirit, and an increased belief both in the potency of education as a purifying and elevating force and in the duty of the collective whole, which we call the State, to look to the well-being of the less fortunate amongst the units which compose it.

There can be no question, I think, that both reformation and prevention are principles which, in regard alike to mode and extent of punishment, properly have an important place in the consideration of the statesman who frames penal legislation and of the judge when he is meting out punishment in the particular case. But the root idea, the governing principle, of the punishment of crime is neither the reformation of the criminal nor the prevention of crime. It is the fitness of suffering to sin—the relation which ought to exist between wickedness and pain. "We must try," says Sir Edward Fry,

writing on "Inequality in Punishment,"<sup>1</sup> "to get some answer  
"to the question which lies at the bottom of the fact of pun-  
"ishment at all, viz: Why do we strive to associate pain with  
"sin? The Judge who pronounces sentence on the criminal  
"tries to do this, the parent who punishes his child for a lie  
"strives to do this. In our whole talk about the inequality  
"or the fitness of punishment, we assume some relation between  
"the two things. Why do men complain of the sufferings of  
"the good and the prosperity of the wicked. Why do they  
"esteem it one of the hardest riddles of the Universe—but  
"that they assume that in a right state of things, pain ought  
"to go with sin, and happiness with righteousness? Why,  
"but for this, should not hell appear the proper home of the  
"righteous, and heaven of the wicked? Is not this the foun-  
"dation of Job's loud wail, and of the echo which it has found  
"through long centuries of men? Here we seem to be near  
"a fundamental fact of human nature, a moral element incap-  
"able of further analysis (so far at least as my chemistry  
"goes), the fact that there is a fitness of suffering to sin, that  
"the two things, injustice and pain, which are both contrary  
"to our nature, ought to go together, and that in consequence  
"we naturally desire to bring about an association of the two  
"where it does not already exist. Whence do we derive this  
"principle? Not from the outer world; for, as we have seen,  
"the world responds to it only imperfectly, and by reason of  
"the very imperfection drives us to efforts to realize by pun-  
"ishment that association which otherwise would not exist  
"in fact. Punishment, in short, is an effort of man to find a  
"more exact relation between sin and suffering than the world  
"affords us. But we may go, I think, one step further, and say  
"that to the mind of man this principle is true, not only abso-  
"lutely, but also *secundum majus et minus*, and that great suf-  
"fering is fitting to great sin, and small suffering to small sin.  
"In fact men have always, so soon as the idea of punishment  
"arises at all, sought for some relation between the punish-

<sup>1</sup> *The Nineteenth Century*, September, 1883.

“ment and the particular offence; they have not been content  
 “to regard merely the effect of the punishment in preventing  
 “other like crimes.

‘ *Adsit*

“ *Regula, peccatis quae pœnas irroget æquas :*

“ *Nec scutica dignum, horribili sectere flagello.* ”

After quoting a confirmatory passage from Rossi's “*Traité du Droit Pénal*”<sup>1</sup> Sir Edward Fry proceeds thus :

“The writers, too, who now so often complain of the ine-  
 “quality of punishment, all proceed on the same footing. All  
 “alike, and justly, as I think, decline to throw away all regard  
 “for the crime committed; all refuse to confine their attention  
 “to the future effects of the punishment. In a word, then, it  
 “seems to me that men have a sense of the fitness of suffering  
 “to sin, of a fitness both in the gross and in proportion; that so  
 “far as the world is arranged to realise in fact this fitness in  
 “thought, it is right; and that so far as it fails of such arrange-  
 “ment, it is wrong, except so far as it is a place of trial or  
 “probation; and consequently, that a duty is laid upon us to  
 “make this relationship of sin to suffering as real and as  
 “actual and as exact in proportion as it is possible to be made.  
 “This is the moral root of the whole doctrine of punishment.

“If this be the true view, some things become clear to us.  
 “First, we see that in the apportionment of penalties, we have to  
 “regard primarily and directly the moral nature of the crime,  
 “and to assign pain and suffering as nearly as we can to the  
 “enormity of the sin. \* \* \* It follows again from what  
 “I have said that reformation, repression, example, however  
 “important they may be in themselves, are only secondary or  
 “collateral to the main idea of punishment.”

I am convinced of the soundness of the view which is so powerfully and eloquently expressed by Sir Edward Fry in the passage of his essay which I have just quoted. It is the view of a writer who has both wide sympathies and wide learning, who has won high judicial distinction in England, first as a

<sup>1</sup> Vol. III, p. 99.



judge of the High Court of Justice, and afterwards as a Lord Justice of Appeal, and who, since his retirement from the Bench, has continued to take an active part in public life as a Privy Councillor and as a Magistrate.

Let me pause for a moment to anticipate a possible criticism of the theory. It may, perhaps, be objected that, if the central idea of punishment is the fitness of suffering to sin, the state ought to punish all sinful acts; whereas, in fact, as I pointed out early in this address, the state does nothing of the kind, but leaves some sins, although socially injurious, such, e. g., as profligacy and avarice, unwhipt of justice.

To this I would reply that the policy of penal legislation is properly affected by considerations which have no place in the administration of punishment where the law has enacted it. The statesman may rightly hold his hand, because he sees that the sinful conduct which he is invited to visit with statutory punishment, will not, in practice, admit of that distinct proof of a definite act of criminality which would alone justify a conviction. Or he may see that the investigation of the sinful conduct will generally involve an inquisition into private or family life or an interference with personal liberty which public opinion will resent as a greater evil than the sin itself. In human affairs, moreover, there is no principle, I believe, however cherished, which, in practical application, is not necessarily subject to limitations. The great principle of liberty, which we love so well on both sides of the Atlantic, is no exception. Look at life in the most free civilized country, and you will see freedom of personal action 'cribbed, cabined and confined' on many sides by the needs of public order, the respect we owe to our parents and to the state, and the regard we rightly pay to the wants and the susceptibilities of our neighbours. Lastly, what logic is there in refusing to recognize that the central idea of punishment, wherever the law does enact punishment, is the fitness of suffering to sin, because there are some sins which the law does not punish?

The theory of the central idea of punishment which I am advocating, naturally would, of course, find no favour with the "determinist" school of criminologists, or with those who place the origin of the right of punishment in the right of defence. Professor Lombroso, who, in his work "*Le Crime, Causes et Remèdes*"<sup>1</sup> (Paris, 1899) espouses, if I follow his argument correctly, the "right of defence" theory, and remarks: "Quelques législateurs prétendent que le criminel doit expier son crime. Mais la conception de l'expiation est ecclésiastique." The learned writer seems to assume that an ecclesiastical origin is in itself a sufficient condemnation. In truth, however, the idea of the moral fitness of suffering to sin had been grasped by the wisest of the ancients, centuries before the birth of Christianity. The sinner himself, for his own sake, ought in the judgment of the Platonic Socrates, as Emerson remarks in his "*Representative Men*" (p. 61), to covet punishment. The salvation lies in the application to him of the principle of the fitness of suffering to sin. So in the *Gorgias*, Socrates is represented as saying "In my opinion the unjust man or doer of unjust actions is miserable in any case—more miserable however if he be not punished and does not meet with retaliation at the hands of God and man;" and, a little further on in the same Dialogue, "If a man or anyone about whom he cares, does wrong, he ought of his own accord to go where he will be immediately punished; he will run to the judge, as he would to the physician, in order that the disease of injustice may not be rendered chronic and become the incurable cancer of the soul."<sup>2</sup>

I should have liked, for your sake, had time permitted, to have quoted from Sir Edward Fry's admirable essay the passages in which he disposes of the title of either the theory of the right of defence or the reformatory theory or the utilitarian theory, which is commonly connected with the great name of Bentham, to be considered as the true theory of judicial punishment. Of the last-named he observes that it is the

<sup>1</sup> p. 464.

<sup>2</sup> Jowett's *Plato*, Vol. ii, p. 345, 355.

inevitable conclusion that punishment is an evil to be inflicted only for the prevention of greater evils. “You have nothing to do with the past offence except as an occasion for preventing other crimes. You have nothing to do with the offender except as a whipping-boy caught for the public good.” Time, however, compels me to hasten on. For, as he points out, and as is indicated in the passage which I have quoted, while the primary principle of punishment is the adaptation of suffering to sin, society has other and collateral ends in its infliction, and punishment, in practice, is not a simple idea, and I desire, before concluding this paper, to say a few words in reference to the secondary and distinct principles which, in practice, are involved in punishment, viz: the prevention of crime in the offender and in others, and the reformation of the criminal himself.

The needful measure of punishment, viewed in relation to repression, will obviously vary in different localities and at different times. Circumstances of the particular epoch or the particular place may largely affect both the degree of mischief to the community which the commission of a certain class of crime may cause, and the degree of the temptation to the commission of it. Essential requisites, for the purpose of repression, which must always and everywhere be provided, are the definiteness and certainty of the punishment, and, as far as possible, and with due allowance for the various circumstances of extenuation or aggravation which cases in the same class present, its systematic application. The wise legislator provides a large latitude in punishment, and confides its assessment to the judge and not to the jury. In my own country, this century has witnessed, both in the statutory enactments for the punishment of crime and in their judicial application, a happy relaxation of severity in regard to many kinds of offences and especially in regard to offences against property. Several causes have, I think, combined to foster the change. Increased charity and humanity of feeling—greater tenderness for human

life and scrupulousness in regard to the infliction of pain—the general sense of security, both in respect of the prevention and detection of crime which the development of an effective police has created; and, in regard to offences against property without violence, the tendency to indulgence towards occasional depredation which accompanies the easier acquisition of things which minister to life's comfort—all these things have, I think, had a part in the reform. Beyond and above them can be traced the operation of a juster and more discriminating appraisal of moral guilt, and of the conviction of experience that excessive severity in punishment defeats its own end, by tempting juries to find verdicts which are not justified by the facts. I rejoice to say that the gradual increase of lenity has, upon the whole, been accompanied by a decrease of serious crime. According to the last available statistics—the Criminal Statistics for 1897—there has been, upon the whole, a continuous and steady decrease of indictable offences during the last twenty years, and the figures for 1897 are actually lower than the figures for any year since 1860, with the exception of the years 1875 and 1896. The annual average for the five years ending with 1897 is 11,633 for cases tried on indictment, and 53,174 for all indictable cases—numbers which are much lower than for the three previous five-year periods, but higher than the actual figures of 1897. The one dark spot in our statistics is a distinct tendency to increase in the case of offences against the person and against property with violence. The increase is mainly due to the latter class of crime, which in my view, is generally to be regarded as the less injurious, and it may, in part, be traced to the modern exhibition of lenity towards the habitual criminal who makes a profession of crime.

If there were to be any continuous and serious increase of crimes of violence against the person, as I earnestly hope there will not be, it would tend to add weight to the opinion, now held by many thoughtful and humane persons, that the power to award what Bentham would designate “characteristic” punishment, viz: moderate corporal chastisement—

should be given by the law whenever the convict has been guilty of cruel violence to the person, deliberately inflicted, and causing serious bodily hurt, or of the brutal violation of a woman or a child. I do not wish to be understood as expressing here any judgment of my own upon the point, and I trust that an improvement in the statistics of crimes of violence will lessen the reason for its consideration.

But while we all rejoice in the diminution of human pain, we are bound not to forget that lenity in punishment, in view of the repression of crime, has its limits. Law and the moral sentiment of the community act and re-act upon each other. The lenity must not degenerate into a laxity which shall either blind the sense of the community to the danger as well as to the wickedness of the crime, or, on the other hand, in cases of grave outrage, tempt men to vindicate by illegal acts the claims of the moral law and the right of society to adequate protection against the evil-doer. Punishment must not be dwarfed until it ceases to have a deterrent effect upon the evil-doer himself. And it must ever be remembered, in respect of habitual offenders, that, whilst they are at large, they are frequently centres of corruption, dealing moral death around amongst the young and innocent, whose last struggles of virtuous resistance they may triumphantly overcome by pointing to the trivialty of the punishment which awaits the detection of the crime. Lenity such as this is not merely mercy misapplied, but down-right cruelty. There is, I think, a profound truth in the recorded saying of the great Duke of Wellington: "They may talk of punishment as cruel, but there is nothing so inhuman as impunity."

In regard to the habitual criminal, experience and study lead me to think that we ought to persevere in seeking a more satisfactory solution of the difficult problem which he presents. For my part, as long as he lives, I must refuse to regard him as absolutely beyond hope of reformation. Often his offences, taken separately, are petty. But he persists in the commission of them, and one has little room for doubt that his periods of freedom are used, not only in the repetition of his wrong-doing,

but in spreading abroad by example and precept, and possibly even by intimidation, the deadly contagion of sin. Mr. Tallack, the Secretary of the Howard Society, advocates, I see,<sup>1</sup> for such offenders, a systematic and cumulative system of detention in special establishments; and the suggestion appears to me well worthy of consideration. Certainly the matter must be handled somehow. Out of 149,942 offenders who went to prison in England (over 52 per cent. be it observed, for default of payment of fines), no less than 85,890 had been convicted before, and 35,199 had been convicted more than five times.

A few words only, in conclusion, as to the application in punishment of the principle of the reformation of the offender. As to this, it is to be borne in mind that we have available practically only one sort of punishment, viz:—imprisonment. The extent to which it can be made effectual for reformatory purposes is still matter of experiment. One is met at the threshold of the search into methods by difficulty of harmonizing, in practical application, the principles of the association and the segregation of prisoners. “The evils of both are manifest—  
“the mutual contamination of the one, and the mental strain  
“of the other. There are advantages also belonging to each  
“mode of treatment. A careful association may have a  
“humanizing influence, and segregation gives opportunities for  
“the exercise of individual kindness and advice.”<sup>2</sup> Promiscuous and unwatched association should not be permitted anywhere. The terrible evils of it—especially its cruelty to the less evil-minded prisoners are too obvious to need words. Howard, the great reformer, characterised gaol gangs and congregate prisons as “filled with every corruption which poverty and wickedness can generate between them.” When association is permitted, it ought to be subject to careful supervision. It is not, however, within the scope of this paper, to discuss minutely matters of prison rule. I will only say further in

<sup>1</sup> Penological and Preventive Principles. London, 1896, pp. 184, 599.

<sup>2</sup> The Prisons Bill, by the Right Hon. Lord Norton. *The Law Magazine and Review*, Aug. 1898.

regard to it, that, whatever scheme is pursued for reformatory purposes inside the prison (I am not speaking of reformatories for the very young offenders), it should conform to the idea that the residence of the prisoner there is primarily for the purpose of punishment. The prison ought, in popular esteem, to be regarded as something quite different from a place of comfortable detention under strict discipline or a compulsory hospital for moral cripples.

The maintenance of the true idea of imprisonment is essential alike, in my humble judgment, to the moral regeneration of the criminal himself, and to the deterrent effect of imprisonment both upon him and upon others. So long as it is not sacrificed, the process pursued within the prison doubtless ought to be one which is as conducive as possible to the health of the prisoner, both in mind and body, and to his permanent amelioration.

In England we have already given considerable effect to the reformatory principle in dealing with persons convicted of crime. We are setting apart special prisons for juvenile offenders. Very young offenders may be sent to a reformatory instead of a prison immediately after sentence. I am glad to be able to say, in passing, in regard to this class, that in England we are free from those symptoms of an increase in juvenile crimes, which, as I have read, are causing anxiety in at least one continental country. First offenders may be, and frequently are, liberated conditionally, that is to say, on their entering into recognizances, with or without sureties, to appear and receive judgment when called upon, and in the meantime to keep the peace and be of good behaviour. In the prisons we have provided, to some extent, for the classification of prisoners, for differential and progressive treatment, and for conditional release before the expiration of the full term imposed by the sentence. We have recently increased the facilities for intercourse with persons who may encourage and help the prisoners to reform. Here, in some, at least, of the states, you have. I well know, made very interesting experiments in the state

punishment of crime in connection with the institution of 'parole' and 'probation,'—extensions of methods of treatment which have some recognition in the English system—and the 'indeterminate' sentence, which is wholly novel. I hope to have a further opportunity of seeing for myself the methods which you have initiated. At present I will only say that I feel some misgivings as to the plan of the indeterminate sentence, especially on account of its apparent conflict with that which is generally held to be a very important principle in punishment, viz:—its certainty; and that, even if just and useful in other cases, it appears to me to be a plan, according to my present understanding of it, which could not properly be applied to criminals who have been guilty of serious crimes of violence or of outrage on women and children. It strikes me as not being either right in itself or safe for the community that malefactors of this sort should, by an exhibition of goodness in prison, which notoriously, is often the part of the worst prisoner, be able to regain their liberty, even upon probation, after a very short term of imprisonment. At the same time, I admit that there is great weight in the view that the hope of the success of such methods of mental and physical treatment as are pursued at Elmira, is bound up with the presence in the system of some such stimulus to effort and self-improvement as the 'indeterminate sentence' is intended to supply. And I will add that, during my visit to the Concord Reformatory, on my way hither, which receives many prisoners whom we should not class as juvenile, I was greatly impressed, not only by the excellence of the arrangements for the moral, mental and physical training of the prisoners, but by the alertness, the intelligence and the willing obedience which that training appeared to be producing in the majority of them.

I must not now trespass longer upon your attention. I regret that the occasion authorised me to deal with a great subject only in an imperfect way. I dare not hope that I have told you anything new. But it has been to me a great pleasure to have had the opportunity of addressing such an audience



on such a theme. For I am persuaded that all here are conscious that, as it is righteousness that exalts a nation, so it is confidence in the administration of justice which more than aught else binds a nation together. In a free and civilised country, where life and property and woman's honour are guarded by just laws, humanely but firmly administered, without respect of person or creed or party, there is little cause to fear for the continuance of popular contentment and the stability of order. We, as lawyers, are, in our generation and country, the stewards of a great national interest. And let it be our prayer that, to whatever region of the earth God-given responsibilities send the children of our mighty race, whether under the Flag of England or under the Stars and Stripes, they may plant there, on a sure foundation, with our Christianity and with our love of freedom, the pillar of strong and impartial justice, as becomes the faithful servants of Him who is the infinitely just Judge.



# NEW JERSEY AND THE GREAT CORPORATIONS.

A PAPER BY

EDWARD QUINTON KEASBEY,

OF NEWARK, NEW JERSEY.

With the increase of business prosperity there has come within a few months past a very great increase in the number of large corporations. This increase has come not by the growth of old companies, but through the combination of small companies into large ones. In many of the leading industries of the country, manufacturers have abandoned the struggle of competition and have united their interests in a large corporation to which they have surrendered all their property and business to be operated under a common head and for a common purpose. The result of this has been an enormous aggregation of capital and the control of vast industries in the hands of a few organizations.

The large amount of the nominal capital, the great volume and extent of the business controlled under one management, and the rapid increase in the number of large combinations has caused alarm and aroused opposition among the people, and a strong demand is made that something shall be done by the states and the National Government to restrict this power of combination and restore the benefit of free competition. "Anti Trust" is already becoming a political watch-word, and the discussion of the question is likely soon to be disturbed by the passions of political contests.

On the one side, there is the increasing tendency of capital toward large combinations for the purpose of diminishing the expense of operation and avoiding competition, and on the other hand there is the undefined but very real fear on the part of the people of the growing power of wealth and of the concentration of the control of great industries in a few hands,

the suppression of small dealers, the control of the markets and the consequent power to raise prices. This fear has expressed itself in legislation against "Trusts" and "Combinations," and in many states severe restrictions are placed upon all corporations that combine in any way for the purpose of avoiding competition, reducing production or fixing the prices of commodities.

It is expressing itself more loudly in the utterances of political leaders and popular agitators, and more effectually in the decisions of the Courts sustaining the validity of these statutes and declaring that combinations to prevent competition or to fix prices are illegal at common law as in restraint of trade.

At the same time, and apparently in spite of all these things, the tendency to concentration increases, and when agreements of combination among several corporations are declared illegal, they all turn their property over to a new corporation with enormous capital and this, without resorting to any unlawful agreement, simply exercises the right of property and by means of its vast wealth controls the business more effectually than was ever done by means of the combination under the name of a trust.

The remedies devised against combinations in the form of agreements and trusts, seem to be inapplicable to the combinations that consist in the actual merger of existing corporations, or in the formation of companies which merely exercise the common right of the purchase of various properties and the good will of many business enterprises.

And yet, although the legal form be different, the practical result of the transaction remains the same. There is the same aggregation of capital; the same combination of many individual enterprises under one control, the same avoiding of competition and the same tendency toward what is commonly called monopoly. The political and economic results are practically the same, and it is evident from the manifold expressions of popular opinion that the people well understand that the result is the same. The resistance to this tendency to the

centralization of industrial enterprises will be continued and new means will be sought for checking the tendency even though it is working through the forms of existing law. The struggle between the two principles of individualism and co-operation will continue, and the question whether the best results are to be obtained by competition or by combination will be fought out until one prevails over the other, or a new and composite result is obtained.

This is a question of political economy, but at the bottom it is the conflict between two social desires, and as Chief Justice Holmes, of Massachusetts, has lately said,<sup>1</sup> the law is after all but the expression of the prevailing social desire, and courts and lawyers, therefore, have to deal with these questions, and we must at least have some knowledge of what these desires are, and we must be familiar with the tendency of the statutes and decisions in which these desires are expressed.

I do not propose to attempt to discuss this difficult subject as a whole. It has been discussed in many pamphlets and text books and has been considered in various aspects in judicial decisions, and it will, no doubt, be the theme of many political speeches during the next few years. It has seemed to me, however, that it might be interesting to this Association to hear some discussion of the policy adopted on this subject by the state that is commonly said to have done more than any other to enable this tendency to go on thus far under the forms of law.—the state which first permitted the forbidden “Trusts” to establish themselves under the form of corporations, and has given legal existence to some of the greatest industrial and mercantile combinations of the country.

The “Trusts” having been declared illegal in New York as combinations in restraint of trade, transferred their property to corporations organized under the laws of New Jersey, and during the last ten years companies have been formed under the laws of that state under which the properties and business of corporations in all parts of the country have been united

<sup>1</sup> Harvard Law Review, March, 1899.

under one management with capital stock of many millions, and the combinations thus formed have accomplished all the purposes of those that had been declared illegal in New York.

In the report of the Committee of the Senate in New York upon the investigation of "Trusts," there was cited as an example, the fact that a combination owning factories in several states, including New York, but without any semblance of any interest in New Jersey, secured a charter there and assumed to carry on its business in New York free from compliance with the beneficial restrictions of her laws.

The fact that New Jersey permitted corporations to hold the stock of other corporations enabled any combination organized under the form of a "trust" to avoid the penalties imposed upon contracts in restraint of trade by simply causing a corporation to be formed in New Jersey and to purchase the stock and so control the property and business of all the companies concerned in the "trust," and so it has come about that New Jersey destroyed the effect of the drastic measures taken elsewhere to stop the growth of great combinations of capital, and the number and extent of such combinations have increased until now, when the notorious Whiskey Trust, which has been attacked with every possible weapon of offense in many States, has lately been organized under the laws of New Jersey as a corporation with a capital stock of one hundred and twenty-five millions, owning the property and business of nearly all the distilleries in the country; and the Federal Steel Company has formed under the same laws a consolidation of the steel and iron industries of the United States, and is the largest steel company in the world.

A list of the largest industrial corporations formed within the past few months shows in a striking manner to what a very large extent New Jersey is responsible for the existence, under the forms of law, of great combinations of capital for controlling the industries of the country.

Thirteen hundred and thirty-six corporations were organized under the laws of New Jersey between the first of January

and the first of August of the present year, with an authorized capital of over two thousand million dollars, and in a list of the existing industrial corporations having stock and bonds exceeding ten million dollars, sixty-one were organized in New Jersey as against sixty in all other states.

The following are some of the largest companies of this character organized under the laws of New Jersey during the current year : The Amalgamated Copper Company, with a capital of \$75,000,000 ; The American Woollen Company, with a capital of \$65,000,000 ; The American Hide and Leather Company, with a capital of \$75,000,000 ; The American Cycle Company, \$80,000,000 ; The National Tube Company, \$80,000,000 ; The American Steel and Wire Company, \$70,000,000 ; The National Steel Company, \$59,000,000 ; The American Smelting and Refining Company, \$70,000,000 ; The United States Worsted Company, \$70,000,000 ; The Rubber Goods Manufacturing Company, \$50,000,000 ; The American Ice Company, \$60,000,000 ; The Distilling Company of America, \$125,000,000 ; Federal Steel Company, \$200,000,000.

It is true that New Jersey is not the only state in which these large corporations have been formed. There are others which have offered great inducements to the formation of such companies. West Virginia and Kentucky have for a long time afforded especial facilities for the creation of companies intended to do business in other states, and Delaware has lately entered into active competition with the others. New York and many other states have followed the example of New Jersey in adopting the important provisions permitting corporations to hold stock of other companies and there are now few states in which corporations cannot be formed which would be capable of acquiring and controlling the property and business of other companies and forming combinations of the most formidable character. The fact remains, however, that New Jersey is the state in which the greatest number of the largest corporations are organized. I need not give in detail the

reasons why they are not organized in other states. In some, the state fees on incorporation are very large and the property represented by capital stock is assessed for taxes at a higher value than similar property of individuals. In others, there is a supervision of the business and the requirement of annual reports of the earnings or of the methods and results of the business, and there are some states in which the legislation against "trusts" and combinations is distinctly directed against corporations which in any way accomplish a similar result.

In view of the strong expression of popular and also of judicial opinion against the combination of corporations for the control of industries, it is evident that New Jersey must answer before the country for the policy by which she has permitted to be accomplished under the forms of her law, a result which has been regarded by the Courts and Legislatures of many states as a serious menace to the social and political welfare of the people.

I propose, therefore, to trace briefly the course of the legislation and judicial decisions in New Jersey with regard to business corporations, and to point out some of the reasons why the protection of her laws is sought in the formation and management of the corporations which control some of the largest industrial and mercantile interests of the country.

And when I have done this, the question will remain whether the corporations thus formed under the laws of my own state are subject to the condemnation that has been pronounced against trusts and combinations in restraint of trade. I cannot attempt to discuss the subject on the economic or political side, and I wish to consider briefly the legal principles on which the condemnation is based, and see whether they apply to corporations which have acquired the property of rival companies, as well as to the combinations made by means of contracts which have been declared to be illegal as creating monopolies and as in restraint of trade.

The policy of encouraging the combination of capital for the promotion of industries is not a new policy in New Jersey.



As early as 1791, when public-spirited citizens of New York, Pennsylvania and New Jersey determined to form a company for the purpose of establishing manufactures in this country, they came to New Jersey for their act of incorporation. It was through the influence and exertion of Alexander Hamilton that the plan was devised. It was a part of his plan of making a single and self-contained nation of the several states. The charter was drawn, or at least revised, by him, and on November 22, 1791, the Legislature of New Jersey passed an act to incorporate the "Contributors to the Society for the Establishment of Useful Manufactures." The authorized capital was one million dollars and the company was empowered to hold property to the amount of four millions. Five hundred thousand dollars were subscribed and over two hundred thousand paid in. The capital stock named was one million dollars. The Governor of the state was authorized to subscribe in the name of the state for shares to the amount of one hundred thousand dollars, and a lottery was authorized to be held for the purpose of raising one hundred thousand dollars more. The society was forbidden to go into general trade, but it was authorized to dig navigable canals and deepen rivers, with powers of condemnation, and given the right to take toll, and provision was made for the incorporation of the inhabitants of such district, not exceeding in area the thirty-six square miles, as the society should select, and this district was to become a town, with a mayor and alderman, and was to bear the name of the great lawyer, William Paterson, who took part in framing the Constitutions and the Judiciary acts of New Jersey and the United States. The site chosen was on the Falls of the Passaic, and the City of Paterson has been engaged for more than a century in useful manufactures, and her silk mills, her iron works and locomotive works have contributed very largely to the development of the country at large; and, not neglecting political and legal affairs, she has lately given to the country its Vice-President and its Attorney-General.

It was not until 1846<sup>1</sup> that any general act was passed for the formation of business corporations, and this again was an act for the encouragement of manufactures. Special charters were granted by the Legislature to companies of various kinds, and general acts had been passed providing for the incorporation of charitable and religious societies. There were statutes passed in 1817<sup>2</sup> and 1829<sup>3</sup> for the protection of creditors of incorporated companies. An act was passed in 1840<sup>4</sup> to prevent fraudulent elections, and there were various other general acts for the regulation of corporations, but the act of 1846 was the first to make a general provision for the aggregation of capital for the purpose of carrying on business without personal liability. This act is the basis of existing statutes under which business corporations are organized in New Jersey. The scope of the act was extended a little in a revision made in 1849,<sup>5</sup> and stockholders were relieved of joint and several liability for the payment in of the whole of the capital stock. The objects for which corporations might be formed under these acts were limited to manufacturing, mining, mechanical and chemical business. It was required that statements of the debts and assets should be published annually. No debts could be contracted beyond the amount of the capital stock, and stockholders were made liable to repay any part of the capital that might be withdrawn. Directors were held liable for debts if they failed to file statements of the payment in of the capital stock. The business of the company must be carried on within the state, and the meetings of the directors, as well as of the stockholders, must be held there; but it was not required that any of the directors, except the president, should be a resident of New Jersey. Careful provision was made for the regulation of elections, and power was given to the Court of Chancery to appoint a receiver and distribute

<sup>1</sup> Rev. Stat., p. 139.

<sup>2</sup> Laws 1817, p. 18.

<sup>3</sup> Laws 1829, p. 58.

<sup>4</sup> Laws 1840, p. 112.

<sup>5</sup> Laws 1849, p. 300.

the assets in case of insolvency. It was assumed in this legislation that the activities of New Jersey corporations would be confined within the state, and it was not until 1865<sup>1</sup> that express provision was made that any company organized under the general law might carry on a part of its business outside of the state, and have one or more offices, and purchase and hold real and personal property outside of the state, on condition, however, that a statement to that effect were made in the certificate of incorporation. In 1866<sup>2</sup> it was declared that a dividend of the accumulated profits, reserving a working capital not exceeding half the amount of the capital stock, should be made every year, and in 1872<sup>3</sup> it was required that a list of the officers and directors, with the residence of each, should be filed annually.

During all this time special charters had been freely granted by the Legislature and companies of every kind had been formed. The Legislature was subjected to the influences of those who sought for special favors, and the statute books were burdened with private acts of incorporation. In 1873 the Legislature abandoned the policy of granting special charters to railroad companies, and passed an act by which any persons who chose to associate themselves together and lay out a route and pay in the money required, should have power to build and operate a railroad anywhere within the state, and in 1875 the Constitution was amended so as to forbid the granting of special charters and the Legislature was directed to pass general laws under which corporations should be organized and corporate powers of every nature obtained. In pursuance of the policy thus indicated, and even before the amendments proposed had been actually adopted, a general act was passed with a view to facilitating the organization of business companies and protecting the capital invested in them.<sup>4</sup>

<sup>1</sup> Laws 1865, p. 354.

<sup>2</sup> Laws 1866, p. 1034.

<sup>3</sup> Laws 1872, p. 27.

<sup>4</sup> Rev. Stat. 1875, p. 175.

The Act was based upon the Act of 1846 as revised in 1849 relating to manufacturing companies and the existing acts regulating corporations in general. The scope of the act was extended so as to embrace not merely the various objects mentioned in the former statutes, but also "every lawful business or purpose whatever."

In most respects the provisions of the law were the same as those of the former statutes, but an important change was made in the omission of the requirement of the annual publication of a statement of the amount of capital stock actually paid in, of the existing debts, and of the assets of the company. This provision has been retained, in many states, and is characteristic of their policy in dealing with corporations, but in New Jersey, where the purpose is the protection of stockholders and creditors, it was considered that the publication of such a statement might, under many circumstances, be disastrous to the business, and that such a requirement would not be tolerated with respect to the business of individuals. Provision was, therefore, made that stockholders should have access at all reasonable times to the books of the company, and they were given power to make such provisions as they thought fit in their by-laws for the regulation of the business, but no compulsion was laid upon the companies to make known to the public, or to their rivals, the precise condition of their affairs. The provision that the debts should not exceed the amount of the capital stock was repealed, and the liability of the directors for failure to file a certificate of the payment in of the capital stock was materially modified.

Provision was now made for the first time that the directors might issue stock in payment for property purchased, and in this act of 1875 appeared the provision which has made it possible for residents of distant parts of the country to associate themselves for business purposes as Corporations under the laws of New Jersey. The act declared that, if the by-laws should so provide, the Directors of any Company might hold their meetings, have an office and keep the books,

except the stock and transfer books, outside the State on condition, however, that they should always maintain a principal office within the State and have an agent in charge thereof, and the Chancellor and Judges of the Supreme Court were empowered, upon good cause shown, to make a summary order for bringing any of the books within the state. It was only the meetings of the directors that could be held outside of the state, and this is so to-day. No permission has ever been given by any general statute to hold meetings of stockholders outside of the state, and the courts have held firmly to the principle that the organic action of the corporation itself in the meetings of its shareholders and the election of officers can only take place within the limits of the state.

It was the evident policy of the legislature to make it easy to form corporations and to encourage the aggregation of capital for business purposes. No previous public notice was required. No petition need be presented to any official for leave to incorporate, nor was it made necessary, as in Pennsylvania for example, to obtain letters patent from the Governor. No limit was placed upon the amount of the capital stock. No tax of any kind was imposed upon the franchise or privilege of incorporating. No tax was laid upon the capital stock, and it was declared that the real and personal estate of all corporations thereafter formed should be taxed the same as that of individuals. The purpose was to treat the property and business of corporations in the same way as that of natural persons and the only restrictions imposed were such as were thought necessary for the protection of stockholders and creditors. Corporations were not considered as being hostile in any way to public interests, and the regulations were intended for the protection of the persons interested in the companies rather than of the public.

No important changes in the corporation laws were made for many years. It was not until 1883,<sup>1</sup> that any fee in the nature of a tax was required to be paid on filing a certificate

<sup>1</sup> Laws 1883, p. 252.

of incorporation, and no change in this fee has been made since then. The payment required is twenty-five dollars on a capital stock of one hundred thousand dollars, and twenty cents for every one thousand dollars of additional stock. It was in 1884, that franchise taxes were first imposed upon corporations, and in this year it was provided that a certain annual tax, by way of license for its franchise, should be paid by all corporations except certain kinds enjoying special privileges which were specially taxed. Manufacturing Companies and Mining Companies carrying on business within the state, were at first wholly exempt, but now these also are taxed unless at least fifty per cent. of their capital stock is invested in manufacturing or mining within the state. The tax is one-tenth of one per cent. upon the capital stock up to three millions, and one-twentieth of one per cent. upon the excess up to five millions, and fifty dollars for every million after that. This tax was imposed simply for the purpose of additional revenue, and the rates were made low in pursuance of the long established policy of encouraging, rather than hindering, the aggregation of capital for the purposes of business. The amount of the tax is based upon the amount of the capital stock, and nothing is left to the discretion of taxing officers, and the law has remained substantially unchanged ever since it was first enacted.

It was in 1888<sup>1</sup> that the Legislature first made provisions for corporations holding and disposing of the stock of other companies, but one of these was of doubtful meaning and the other was limited to certain companies and it was not until 1893,<sup>2</sup> a year after a similar act had been passed in New York, that the general act was passed declaring expressly that it should be lawful for any corporation of the state of New Jersey to purchase, hold and sell the stock or bonds of any other corporation in the same manner as an individual might do; but even before this it had already been the practice

<sup>1</sup> Laws 1888, p. 385, 445.

<sup>2</sup> Laws 1893, p. 301.

of corporations, under the advice of counsel, to purchase and deal in such stocks under the policy indicated in existing statutes and the general power to hold and deal in property of every kind in the same manner as natural persons.

It was this power to acquire and hold the stock of other corporations that made it possible for corporations to be organized in New Jersey for the purpose of acquiring the stock of other companies of a similar character, and so to control their property and business, and to bring about under the form of corporate ownership the great combinations which, when produced by means of contracts, had been declared in other states to be in restraint of trade and contrary to public policy.

There was a further revision of the general corporation law in 1896.<sup>1</sup> The limit of fifty years to the duration of a corporation was removed, and provision was made for the creation of different classes of stock, with such preferences and voting powers as might be expressed in the certificate, debts in all cases having preference over preferred stock, and under this provision founders' shares (as they are called in England) may now be created. In 1897<sup>2</sup> acts were passed for the protection of the stockholders and officers of domestic and foreign corporations against suits within the state upon any personal liability arising under the corporation laws of other states. Still further changes were made in 1898.<sup>3</sup> The incorporators were authorized to define and limit the powers of the officers, directors and stockholders so that the certificate should be not merely a record of the incorporation, but also have the nature of a charter controlling the action of its several parts. Stringent provisions were made to secure the maintenance at all times of a registered principal office, at a definite place within the state, with an agent always in charge thereof, on whom process may be served, and from whom information as to the affairs of the company may be obtained by all who are entitled

<sup>1</sup> Laws of 1896, p. 277.

<sup>2</sup> Laws of 1897, p. 124.

<sup>3</sup> Laws of 1898, p. 407.

to it; and companies so registered were relieved of the necessity of giving information to the tax assessors of other states of the actual residence of their directors and stockholders.

In 1899<sup>1</sup> an act was passed which facilitates combinations by declaring that thereafter it shall be lawful for any corporation, except railroad and canal companies, with the consent of two-thirds in interest of its stockholders to lease its property and franchises to any other corporation.

The statutes relating to conspiracy have a bearing upon the policy of the state with regard to combinations in restraint of trade. Under the Revised Statutes of 1846<sup>2</sup> it was a misdemeanor to commit any act injurious to trade or commerce, and the law remained unaltered on this point until 1892. Under a similar statute in New York combinations in restraint of competition were held to be illegal,<sup>3</sup> but in 1892 the act relating to conspiracy was amended in New Jersey so as to omit all mention of acts injurious to trade or commerce,<sup>4</sup> and it had already been declared that it should not be unlawful for workmen to bind themselves by agreement to persuade others to enter into combinations against entering or leaving an employment.<sup>5</sup>

At the risk of being tedious I have reviewed in some detail the course of legislation in New Jersey with regard to corporations for the purpose of showing what the policy of the state has been with respect to the aggregation of capital for business purposes, and how it came about that capital from other states has sought the protection of her laws in the formation of corporations, with power to acquire and hold the stock of other companies, and unite under one control the property and business of many rival enterprises.

It has been asserted with some heat that New Jersey has encouraged foreign enterprises to be incorporated under her

<sup>1</sup> Laws of 1899, p. 334.

<sup>2</sup> Revised Statutes 1846, Crimes, sec. 61.

<sup>3</sup> *People vs. Sheldon*, 139 N. Y. 251.

<sup>4</sup> Laws 1892, p. 200.

<sup>5</sup> Laws 1883, p. 36.



laws with a view to obtaining relief from the proper restrictions and obligations imposed by the laws under which they really belong, and it is suggested that it is only through ignorance of the uses to which it would be put that she has thus permitted her system to be abused.<sup>1</sup>

I think that a careful examination of the course of legislation and judicial decision in New Jersey will show that in dealing with the organization and regulation of corporations she has followed a consistent, definite and progressive policy. This policy is different from that of many states. It is a policy of encouraging rather than discouraging the aggregation of capital. It regards the corporation as a means bringing the savings of many into efficient use as capital for the development of resources and the promotion of industries. It treats the corporation as an association for the purposes of business and deals with it as it deals with individuals and partnerships in the conduct of their affairs. It adopts the principle that men, whether associated as partners or in joint stock companies under the name of corporations, should be allowed all the liberty that is consistent with public safety and order; that freedom of contract is an essential part of the liberty of the citizen, and that the largest practicable freedom of the individual is for the best interest of the community.

In pursuance of this policy, the constitution has forbidden the granting of special privileges or franchises and the creation of corporations by a special act of the legislature or patent from the Governor, and the laws have declared that any persons under certain conditions may form a corporation for any lawful purpose whatever. Special regulations are made for those that are given public franchises in the exercise of the eminent domain, or the use of the public streets, or those that occupy positions of trust like banks or insurance companies, but in regulating corporations formed for general business purposes, the laws have been directed to the protection of stockholders and creditors, and to the security of the money invested

<sup>1</sup> Report of the New York Senate Committee on Trusts, 1897, p. 21, 22.

rather than to the regulation of the business in the interest of the general public. It has been thought best to treat them as business enterprises, subject only to the inexorable laws of trade and to the restrictions that govern individuals in the conduct of their business affairs. The statutes, therefore, have made provisions by which the stockholders, in their certificate of incorporation, or in their by-laws, may define and limit the powers of the officers and directors, or may give them such ample powers as they may think necessary for the successful conduct of the business. Stockholders are given the right to inspect the books with power to enforce it for proper purposes and in a reasonable manner. They may demand and have full reports from the directors of the condition of the business. An election must be held every year, and in every way the directors are responsible to the fullest extent to the stockholders and subject to their control, but no obligation is put upon an ordinary business company to make the condition of its affairs known to the public. It is only to stockholders and creditors who have a personal interest in the matter that the Company is obliged to make known its condition, and, since the revision of 1875, there has been no law requiring statements of the debts and assets to be filed or published, nor have assessors been authorized to inquire into the earnings for the purpose of imposing a tax upon income.

It is largely because of this feature of the policy of New Jersey in dealing with corporations, and because the conduct and condition of the business are treated as private and not public affairs, and are not made the subject of the scrutiny of the assessor, the curiosity of the public and the jealousy of rivals that men engaged in large business enterprises, even though in other states, seek the protection of the laws of New Jersey.

With regard to taxation, the policy of New Jersey has been to make the burden moderate and invariable. No taxes at all were imposed upon corporations as such until 1884, and the burden then imposed was a definite tax at a moderate rate upon the amount of the capital stock actually issued, and the rate

then fixed has remained unchanged ever since. It is not left with the assessors to determine the value of the franchise and the amount of the tax, and a company can count with certainty upon the amount of the tax both at the present time and in the future. The tax on property is levied as if it were held by individuals. It is a local and not a state tax, and the assessment is made upon the property itself and not on the capital stock.

The element of stability is an important characteristic of the laws governing corporations in New Jersey. Few changes have been made in the statutes during a long period and these were made along the lines of development already laid down. The decisions of the Courts also have been consistent and uniform. The Courts have not been easily disturbed by sudden changes of public opinion with respect to corporations, and the bar has been able to rely upon an orderly development of legal principles governing corporate enterprises. Stability in legislation and judicial decision are an important inducement in the choice of a domicile for an organization which is to endure for an indefinite period, and, in view of the possibility of failure and the sudden end of the corporate life, it is also satisfactory for the parents of the enterprise to know that in case of dissolution it will have skilful treatment and decent burial. It is a fact of some importance in determining the location of a Company in New Jersey that in case of insolvency or on dissolution for any cause, the winding up of a corporation is in the hands of the Court of Chancery, and that this is but one Court for the whole state made up of Judges set apart for dealing with cases in equity, and acting together with the Chancellor at the head, so that the policy and practice of the court are fixed and well known, and there is no conflict of local jurisdictions with respect to injunctions and the appointment of receivers, and that this court is well known to consist of men of integrity and sound discretion, well acquainted with the law.

These are some of the reasons why capitalists in other states organize corporations under the laws of New Jersey, and they

are based for the most part upon the policy adopted by New Jersey with reference to corporations organized by her own citizens and obviously without intention of drawing them away from other states. The chief points of difference in actual policy between New Jersey and a majority of the states relate to the supervision of the business in the interest of the public, and the modes and extent of state taxation. On both of these points the policy of New Jersey was established many years ago, and it was not until the opposite policy in other states had been carried so far as to become oppressive that persons began to seek the benefit of organization under the laws of New Jersey. I need not now discuss the question which of these two kinds of policy is the better from an economic point of view. It is enough to say that the policy of New Jersey was adopted with a view to the interests of her own people and the development of her own resources, and if it be found to be one that encourages the aggregation of capital for the promotion of industries in other parts of the country, this in itself is not sufficient reason for a change of policy on the part of New Jersey.

I have given some of the reasons why the corporations choose New Jersey as their domicile, but this does not answer the question which seems to be more urgent at the present time, why New Jersey permits her laws to be made use of for the purpose of giving legal form to those great aggregations of rival enterprises which have been condemned in other states as combinations in restraint of trade and against public policy. How can she justify the fact that she permits and even encourages the formation of corporations which apparently accomplish the same result as the forbidden trusts?

The question is a broad one and New Jersey has not attempted to give an answer to it. She has simply acted under the well established policy of encouraging the aggregation of capital for business purposes, and has found herself suddenly confronted with a new condition arising out of an unexpected development in the world of trade and industry.

The difficulty is that there is nothing really new in the situation, except the extraordinary size of the corporations, the large amount of property controlled and the vast extent of their enterprises. Their appearance is alarming, but after all the size is only the result of unduly rapid growth, and it is not easy at once to devise means to check over-growth without risk of destroying the life. Combination of capital has become a necessary part of the social organization, and it is hard to stop it at any particular point in its development. The corporation has become the established means of uniting the money and energies of individuals to accomplish large undertakings, and there is no ready rule of law or of political economy to be applied to determine to what extent they shall grow or how much property they shall acquire.

Look for example at the corporations by which the most extensive combinations of rival industries have been accomplished, and it will be seen that they are exercising only the ordinary powers which have always been conferred upon ordinary business companies. The owners of mills in various parts of the country, tired of the struggle of ceaseless competition among themselves are convinced that the cost of production can be diminished, and the profits of the business increased by combining all under one ownership and control. They form a corporation under the laws of any state where corporations with ordinary powers are permitted to be formed. The value of the property and business of each is estimated as nearly as may be and then they are sold to the new corporation for the prices agreed upon and paid for in money or stock as the parties may choose. The proceeds of the sale are divided among the stockholders and the new corporation becomes the owner of the property and business of all the old ones and proceeds to manage the business in such manner as may seem best to its stockholders and directors. It exercises the rights of ownership, and there is nothing in the ordinary rules of law that limits the amount of the property to be held, or the extent of the business to be controlled.

It is true that every state may limit the sphere of the action of its corporations. It may decline to give them power to hold property or carry on business outside of its own borders. It may confine the privileges of incorporation to its own citizens. It may compel their directors to hold their meetings and transact their business within the state, it may even limit the amount of property which they shall acquire, but unless it is willing to adopt this policy of close restriction, it cannot control the extent of the business that they shall carry on, or the number of rival manufactories that they shall absorb.

It is true that there are provisions in the Statutes of New Jersey which make it easy for combinations of rival enterprises to form corporations under her laws. There is the provision that corporations may hold property and transact business in other States; but she is certainly not prepared to say that her business corporations shall not have the privilege possessed by every citizen of engaging in interstate commerce and holding property beyond the narrow limits of the State. There is the permission to directors to have an office and hold their meetings outside of the State, but this has been given for the last twenty-four years, and so long as careful provision is made for actually and constantly maintaining the principal office at a definite place within the State, and so long as men of other States have their money invested in her corporations, she will not, without urgent reason, change her law so as to put them to the inconvenience of holding every meeting of the directors within her own borders.

She might insist on the close supervision of corporate business, require the filing of detailed reports of debts, assets and earnings. She might levy taxes in such a way as to expose the company to the extortion of officials, or to make its business uncertain and the burdens oppressive, but these are questions of local policy which concern her dealings with all her corporations and they are not to be settled with a view only to the effect of her policy upon the acquisition of property and the control of business in other States. With respect to

reports of debts and earnings, she may well take the ground that the requirements of the stock exchange are more efficient than statutes in securing to the public a proper acquaintance with the condition of such corporations as are of public concern.

The most important provision with respect to the formation of large combinations is that which permits the purchase of stock of other corporations. It was under this that the Standard Oil Trust and other trusts were reorganized as corporations in New Jersey, but the same provision was adopted in New York as early as 1892 and has since been adopted in many other States, and, as I have already pointed out, this privilege is not necessary to the combination of several companies into one. It is quite possible, and it is now the common practice, for the new corporation to purchase the property itself and not the stock of the old companies. It is only a matter of convenience in some cases to purchase the stock and keep the old companies alive, but if it be forbidden to purchase the stock, there is nothing to prevent any one from buying the property, nor can the stockholders of the companies that sell their property be prevented from accepting stock in the new company in payment for their shares in the proceeds.

One of the inducements to the promotion of large corporations and the combination of industrial properties is the inflation of stock and the creation of fictitious stock is one of the most serious evils of the whole movement.<sup>1</sup> This can be discouraged, though not wholly prevented, by the requirement that nothing but money shall be taken in payment of capital stock. The laws of New Jersey provide that stock may be issued for property purchased, and the property must be put in at a fair and *bona fide* valuation, yet under the decisions of the courts, and now under the statute, in the absence of fraud in the actual transaction, the judgment of the directors as to the value of the property purchased is conclusive.<sup>2</sup> In this con-

<sup>1</sup> *Wetherbee vs. Baker*, 35 N. J. Eq. 501-512; *Edison vs. Electric Imp. Co.*, 50 N. J. Eq. 354 (1892).

<sup>2</sup> *Bickley vs. Schlag*, 46 N. J. Eq. 533; *Vail vs. Phillips*, 14 N. J. L. J. 45.

dition of the law it is impossible wholly to prevent undue inflation of the stock, but the true remedy is not in forbidding the issue of stock for property purchased, nor even in limiting it strictly to the value of the property. Some allowance must be made for the earning power of the property and business under the control of the new corporation and some inducement of a speculative nature must be given to tempt capital into new and doubtful enterprises. It is stockholders and creditors that are chiefly interested in knowing what the property for which the stock is given is really worth, and they have full protection if they can ascertain what that property really was. The English plan is to punish promoters severely for issuing a false prospectus, and to require the contract for the purchase of the property to be written in detail and give to anybody the right to obtain a printed copy of it for sixpence. New Jersey would do well to adopt both of these precautions against undue inflation, and she ought also to do away with that provision of a statute of 1893 by which, on the consolidation of two or more corporations, the amount of the capital stock may be fixed by agreement of the directors without any reference whatever to the amount of stock or property of the companies so combined.<sup>1</sup>

I cannot go in detail into the question of remedies. I have only referred to some of the chief characteristics of the law under which the great corporations are organized in New Jersey so as to show that after all they are the provisions that are common to all companies, and are for the most part provisions that have been in force for many years, and that changes sufficient to affect a serious restraint upon the great industrial combinations would involve changes in the established policy of encouraging and protecting the aggregation of capital for the ordinary and necessary promotion of manufactures and industries of every kind. The fact is, as I have said before, that it is the great size of the new corporations and the extent of other property and business that makes the difference between them and those we have been accustomed to, and we have not yet found rules of policy by which to foster the one and discourage the other.

<sup>1</sup> Laws 1893, p. 121. See also 1883, p. 242; 1888, p. 441;



There are other states in which the great combinations of capital have agitated the public more strongly than in New Jersey, but in looking over the recent legislation of these states I find it strangely ill-adapted to the latest forms which these combinations have assumed. The legislation is called "Anti-Trust" legislation, and the laws, even the latest of them, are directed against "trusts" or combinations and agreements in restraint of trade. These are treated as in the nature of a conspiracy, and agreements of that character are made invalid and the acts described are indictable as misdemeanors. These statutes were directed against those combinations which consisted in agreements among rival corporations and took the form of "trusts," the stock of each company being assigned to trustees, who directed the policy of all the companies, regulating production, avoiding competition and fixing the prices of the products. These were undoubtedly combinations and agreements, and they were declared to be illegal as in restraint of trade and creating monopolies, and this form of combination was therefore abandoned, and the simple one adopted by which the property of all was transferred out and out to a new corporation.

The name of "trust" is still applied in popular parlance to the large corporations, but in the application of a criminal statute it is hard to distinguish between two corporations formed under the same laws so as to denounce upon one the punishment prepared for the "trust" and to leave the other free to carry on its affairs. Proof of this is found in the difficulty the Courts have had in enforcing these statutes, because the language used to define a trust or a contract in unlawful restraint of trade is broad enough to cover acts that are by common consent perfectly lawful, and such reasonable restraint of trade as has always been held to be legal.

In examining the decisions based upon the common law it will be found that in most of the cases it has been agreements that were declared to be illegal as in restraint of trade. It is the agreement that the Courts refuse to enforce as being against

public policy, and it is the agreement that is a conspiracy against the public welfare and indictable. But however reprehensible may be the means by which the organization of the corporation has been brought about, it is difficult to treat the existence of a corporation lawfully formed as an agreement in restraint of trade, or to hold the ownership of all the flour mills that can be purchased to be an indictable conspiracy. There are cases in which it has been held that the objects of a corporation were illegal when it was formed in pursuance of an arrangement for purchasing all the available manufactories in the country and the purpose of its existence was to control prices and create a monopoly in one of the necessary articles of commerce. Such were *Richardson vs. Buhl*<sup>1</sup> in Michigan; *Distillery and Cattle Feeding Co. vs. People*,<sup>2</sup> in Illinois, and *State vs. Nebraska Distillery Co.*<sup>3</sup> in Nebraska. In the first of these the decision of the Court on this point was not within the issues argued by counsel, and the real point of the case was that the contract was void by which the plaintiffs had sold their property to the corporation. The other two cases were on proceedings in *quo warranto*, and the organization of the companies was annulled. In direct proceedings against the corporations it was held that they were formed for an illegal object and should be dissolved.

The fact remains that the legislation against trusts and combinations as conspiracies fails to reach the corporations already organized, however large they may be or however large a part of the trade they may control. It is just here that the policy of New Jersey is different from that which seems to prevail in the greater number of states. In New Jersey, it has been held that in a collateral proceeding the Court of Chancery has no power to restrain a corporation organized under the forms of law from performing acts within its corporate power merely because the purpose of its incorporation may have been to prevent competition and establish a monopoly,<sup>4</sup> and in a very

<sup>1</sup> 77 Mich., 632.

<sup>2</sup> 156 Ill., 448.

<sup>3</sup> 29 Neb., 700.

<sup>4</sup> *Attorney General vs. American Tobacco Co.*, 55 N. J. Eq. 352.

recent case in the Court of Errors,<sup>1</sup> it has been held that although contracts in restraint of competition in the production of some commodity in the production and sale of which the public have an interest are contrary to public policy, yet when such agreements result in the formation of a corporation with the powers conferred under the liberal statutes of New Jersey, it may lawfully buy the business of its competitors and the courts cannot pronounce a contract for such permitted purchases invalid, although it may tend to produce, and may temporarily produce a monopoly.

I may quote the language of the Chief Justice as a clear statement of the opinion of the highest court of New Jersey on this subject. It was a case in which a corporation was formed for the purpose of buying the entire property of other corporations and carrying on their business, and the purpose was to control the business of that character throughout the greater part of the United States. The selling companies agreed not to engage in that business in any State in the United States, except in the State of Nebraska and the territory of Arizona. A bill was filed to restrain the defendants from continuing to engage in that business. It was insisted that the contract could not be enforced because it was made in pursuance of an unlawful plan which was in restraint of trade and tended to create a monopoly.

After showing that an individual might lawfully purchase one rival business after another until he had, for the time at least, completely excluded competition, and that the courts in the absence of legislative restrictions, if such could be imposed, had no power to prevent it, and after referring to the liberal powers conferred on corporations for acquiring and holding property of every kind including the stock of other corporations, the Chief Justice said: "Under such powers it is obvious that a corporation may purchase the plant and business of competing individuals and concerns. The legislature might have withheld such powers or imposed limitations upon their

<sup>1</sup> Trenton Potteries Co. vs. Oliphant, June 10, 1899.

use. In the absence of prohibition or limitation on their powers in this respect, it is impossible for the Courts to pronounce acts done under legislative grant to be inimical to public policy. The grant of the legislature authorizing and permitting acts must fix for the courts the character and limit of public policy in that regard. It follows that a corporation empowered to carry on a particular business may lawfully purchase the plant and business of competitors, although such purchases may diminish, or for a time at least destroy competition. Contracts for such purchases cannot be refused enforcement."

A petition for a rehearing of this cause has been filed, and although the opinion of the court was unanimous, it is possible that after further argument a different conclusion may be reached.<sup>1</sup>

The court has declared in this opinion that "contracts by independent and unconnected manufacturers to control the prices of their commodities, either by limitation of their production or by restriction on distribution, or by express agreement to maintain prices, are without doubt opposed to public policy," but it decides that a corporation having once been formed under statutes which authorize corporations to acquire and hold property of every kind in the same manner as individuals, the corporation must be regarded as possessing all the powers incident to the acquisition of property and that contracts made for the protection of that property must be maintained.

If this conclusion is sound then it will follow that the contrary conclusions in other states must ultimately be abandoned and the "trusts" so widely condemned will be generally established under the form of great corporations which will accomplish substantially the same purpose as the combinations made between independent dealers and manufacturers.

However this may be, the practical question to be considered is, how we shall deal with the great combinations of capital in their new form as corporations. Shall we apply to them the rules of law and principles of public policy that are applied

<sup>1</sup> The court has since refused to grant a rehearing.

to corporations in general, making only such changes as new conditions and new dangers seem to suggest, or shall we regard them as something altogether new and monstrous, a class by themselves, enemies of society and beyond the pale of the law?

It is insisted that because the objects they accomplish are the same as those of the trusts and the trusts have been held to be illegal as monopolies and contracts in restraint of trade, the great corporations must, therefore, be treated as illegal, their corporate franchises revoked and their property taken away from them. The difficulty is to distinguish between one corporation and another, and to make any uniform law that shall strike at the large corporations without affecting the ordinary rights of property and discouraging the combinations of capital that are now required for large undertakings. There is no doubt that limits may be put upon the amount of the capital stock of a corporation and the value of the property that it may hold. The purposes for which it may be organized may be restricted, and the business it is authorized to carry on may be strictly defined. All this is a matter of regulation to be determined upon careful consideration of the best interests of the public, but the method that has been adopted by the legislatures and the courts of many states is to declare the corporation itself an unlawful thing because the purpose of its creation was to unite a number of rival enterprises into one and so avoid competition and create a monopoly. Agreements thus to unite have been held to be unlawful as in restraint of trade, and so the corporation itself is declared to be formed for an unlawful purpose and subject to be dissolved. The answer of the Court of Errors of New Jersey is that this consequence does not follow, and that even though such agreements be opposed to public policy, corporations duly organized under laws conferring general powers cannot be declared to be unlawful.

There is still another reason, and that is this: While it is well settled that certain kinds of contracts in general restraint of trade are void and not to be enforced, it is not true that

such contracts are unlawful. There have been some expressions of opinion to that effect, but I think I may safely say that it was not until the doctrine came to be applied to the "trusts" that it was held in any well considered opinion that contracts in general restraint of trade were criminal or even illegal.<sup>1</sup> If this be so, then even though the agreement to form a combination of capital may be against public policy and void, yet the corporation when formed is not the result of an agreement that was unlawful at common law.

It is open to serious question whether there is any foundation in the common law for the assertion so frequently made that these agreements for the combination of capital for the control of large fields of industry are illegal or even unenforceable.

There are two propositions assumed to be rules of law in condemning them. One is that monopolies are contrary to the common law, and the other that contracts in general restraint of trade are illegal. It has been held that the combinations are monopolies, and that in so far as they stifle competition on a large scale they are in restraint of trade, and the conclusion is that they are unlawful.

It may be that they are, under certain conditions, contrary to public policy, but that question ought to be dealt with as the question in issue and not regarded as concluded by rules of law which were worked out under wholly different circumstances, and which the event may show are not applicable to the present conditions.

The first of these propositions is based on "The Case of Monopolies" in the reign of Queen Elizabeth,<sup>2</sup> and on the declaration of Lord Coke in the Third Institute<sup>3</sup> that monopolies are against the ancient and fundamental laws of the realm, but the case related to the royal grant of an exclusive privilege of making playing cards, and Lord Coke defined a

<sup>1</sup> See *McGregor vs. Mogul Steamship Co.*, 23 Q. B. Div. 598; App. Cas. [1892] 25.

<sup>2</sup> *Darcy vs. Allein*, 11 C. Rep. 84.

<sup>3</sup> 3 Inst. 184.

monopoly as an institution or allowance by the King. He was commenting on the statute against monopolies, 21 Jac. 1, c. 3, and declared that a patent for an invention was not good when it appeared that thereby bonnets and caps might be thickened by a fulling mill by which more might be thickened and fulled in one day than by the labors of four score men, who got their money by it. The resolution in *Darcy vs. Allein*, and the declaration of Lord Coke, and all the statements in the early cases on monopoly relate to the power of the King to grant special rights against the common right of the subject to labor and to trade.

It was not until a few years past that the doctrine of monopolies was applied, and then in this country, to what was called a practical monopoly, a condition arising, not out of any exclusive right, but merely out of the voluntary acts of individuals or corporations in obtaining control of the supply or manufacture of a commodity. The application of the rule to this condition may be a wise one, but it ought to be frankly acknowledged that the rule of law is a new one and is not based on the opposition of the English people to royal grants of exclusive privileges, and in making the application of the rule it should be carefully considered whether the combination can really obtain exclusive powers, or whether the fact that there is no legal prohibition against others does not in effect deter the combination from exacting undue tribute. This doctrine thus guarded and directed against monopolies of a dangerous character and large in extent, will enable the courts to protect the public against injurious acts on the part of combinations that are shown to be in fact against the interest of the community, but it does not justify them, in the absence of specific statutes, in declaring the existence of a very large corporation to be unlawful.

The other proposition is that combinations to reduce competition are in restraint of trade, and that contracts in general restraint are unlawful. The latter clause of this proposition was announced in early English cases which had no relation to

combinations for the purpose of preventing competition. The leading case of *Mitchel vs. Reynolds*, in which this rule was laid down in 1711, was a suit upon a bond given by a baker's apprentice not to exercise his trade within the parish of St. Andrew's, Holborn, for the period of five years, and it was held that the restraint being reasonable and the contract made upon good consideration, an action on the bond might be maintained. Chief Justice Parker referred to the "abuse that voluntary restraints are liable to, as for instance, from corporations who are perpetually laboring for exclusive advantage in trade," but the contract regarded as illegal was that of one man not to exercise his trade, and the reason of disapproving of it was that he would be deprived of the means of livelihood and the public of his services. There is a long succession of cases in England on contracts in restraint of trade, and nearly every one of them relates to contracts like that in *Mitchel vs. Reynolds*, in which a man in leaving an employment or selling his business agreed not to carry on the same business within a certain area or for a given time, and the only question has been whether the restraint imposed upon this man with respect to the exercise of his own calling is greater than is reasonably necessary for the protection of the other party. The rule was laid down that contracts in general restraint of trade are illegal, but the reason given was that to restrain a man from carrying on his business in any part of England could not benefit the other party, and that it was injurious to the public, and in the latest cases where this reason has failed the rule itself has been regarded as inoperative.<sup>1</sup>

There are a few cases in England in which it has been held that manufacturers, for example, may not bind themselves to close their works at the dictation of the majority for the purpose of meeting a strike of the workmen<sup>2</sup>, but a similar combination on the part of the workmen though formerly condemned as in restraint of trade has long since been held to be

<sup>1</sup> *Nordenfelt vs. Maxim Nordenfelt Guns, etc. Co.*, App. Cas. [1894] 538.

<sup>2</sup> *Hilton vs. Eckersley*, 6 El. & Bl. 47.



legal both in this country and in England, and the House of Lords<sup>1</sup>, while admitting that a contract for such a purpose may not be enforceable, has decided that a combination of steamship companies to crush out competition by putting down prices and refusing to deal with their rivals was not an actionable wrong.

The doctrine of restraint of trade if applied to the combinations of capital must be taken with its limitation that the restraint to be illegal must be so general as to be unreasonable in view of the purposes for which it is imposed. It is applicable only to contracts and not to the ownership of property. While it makes contracts void and unenforceable, it does not make them unlawful and the formation of a corporation to carry out the void contract cannot therefore be treated as unlawful.

The mere fact that a contract is intended for the purpose of avoiding competition does not make it illegal. Every contract by which a man sells his business to another and agrees not to carry it on himself is intended for the very purpose of avoiding competition, and it is not because they stifle competition that contracts are considered as being in restraint of trade, but because they deprive the community of the benefit of the labor of one of the parties.

To prevent competition may incidentally work a restraint of trade, but it is of the essence of freedom of trade that men shall not be compelled to carry on business unless they wish to do so. They cannot be compelled to compete against their will. In a recent case in New Jersey brought to restrain a mining company from purchasing the mines of rival companies and consolidating their interests in settlement of a long litigation, Vice-Chancellor Pitney said:<sup>2</sup>

“Now I am unable to find any foundation either in law or in morals, for the notion that the public have any right to have the private owners of this sort of property continue to do business in competition with each other. No doubt the public has a reasonable ground to entertain the hope and expectation that

<sup>1</sup> *Mogul Steamship Co. vs. McGregor*, App. Cas. [1892] 35.

<sup>2</sup> *Meredith vs. New Jersey Zinc & Iron Co.*, 55 N. J. Eq. 211.

its individual members will generally, in their several struggles to acquire the means of comfortable existence, compete with each other. But such expectation is based entirely upon the exercise of the free will and choice of the individual and not upon any moral duty to compete and can never from the nature of things become a matter of right on the part of the public against the individual. In fact the essential quality of that series of acts or course of conduct which we call competition is that it shall be the result of free choice of the individual and not of any legal or moral obligation or duty." This decision was affirmed by the Court of Errors for the reasons given by the Vice Chancellor.<sup>1</sup>

It is important for us in this country to observe that the English Courts have not applied the doctrines of monopoly and restraint of trade to large industrial combinations whether in the form of agreements or corporations. Vice-Chancellor Kindersley in 1867 denounced an agreement among railroad companies for the control of coal fields as a dangerous monopoly, but the decision was put on the ground that it was beyond the powers of the railway companies to lease and operate coal mines,<sup>2</sup> and this was followed by the Chancellor in New Jersey in a similar case relating to railways and coal mines.<sup>3</sup>

In the case of Mogul Steamship Company it was admitted that a combination among ship owners to crush out competition by lowering prices and discriminating against shippers who dealt with rival companies might be unenforceable if in general restraint of trade, but it was held that it was not illegal and was not a criminal offense, nor an actionable wrong, and the Judges in the House of Lords maintained in the strongest language the right of combination for the purpose of acquiring property and controlling business.<sup>4</sup> As a matter of fact, the combination

<sup>1</sup> 57 N. J. Eq. 454.

<sup>2</sup> Attorney General *vs.* Great Northern Ry. Co., Drew. & Sim. 184; 6 Jur. N. S. 1096.

<sup>3</sup> Stockton *vs.* Central R. R. Co., 50 N. J. Eq. 52.

<sup>4</sup> McGregor *vs.* Mogul Steamship Co., 23 Q. B. Div. 598; App. Cas. [1892] 25.

of business concerns in large corporations has been unchallenged in England and has reached enormous proportions. The English opinion was expressed the other day by the London *Economist* when it said: "It is absurd to keep going a hundred inefficient competing agencies to do badly what one efficient consolidated agency can do well."

It is certain that the tendency in the United States toward combination and consolidation has not been seriously checked either by public opinion or by adverse legislation and judicial decision. The repeated assertion that such tendency is contrary to public policy has had scarcely any effect upon the actual results, although it may have changed the means by which they have been reached. If the result is really bad, some way will be found to prevent it, no matter what devices may be chosen to accomplish it; but the fact that the tendency has gone on so many years, and that the results are attained under the ordinary power of corporations to purchase and hold property may well cause us to ask whether, after all, this movement in the direction of combination of interests and the prevention of undue competition is in fact wholly evil and in every aspect against the best interest of society, and whether the danger may best be met by trying to stop the movement, or by putting it under reasonable control.

The question is too large a one for discussion at this time. A great deal has been said and much remains to be said on both sides, but I may at least suggest that the question is not concluded by the authority of the judicial decisions that have declared that these combinations are against public policy. "Judges," said Mr. Justice Cave,<sup>1</sup> "are more to be trusted as interpreters of the law than as expounders of what is called public policy," and, as Lord Bramwell declared in a case which he said was an illustration of the wisdom of this remark, "No evidence is given in these public policy cases. The tribunal is to say, as a matter of law, that the thing is against public policy and void. How can the judge do that without any evi-

<sup>1</sup> In re Mirams, 1 Q. B. [1891] 595.

dence as to its effect and consequences?" The concurrence of judicial opinion is, of course, a strong indication of the public opinion, which, in a sense, is the policy of the people, but the question whether a contract or a great social movement is really against public interest is a question of fact, and a true conclusion depends, not so much upon the study of judicial precedents, or the application of oft repeated maxims, such as "competition is the life of trade," or "contracts in general restraint of trade are illegal," as upon a close examination of social conditions and the study of the actual economic results. The judge must take a long view, both backward and forward, and he must watch the progress of economic science and be careful not to mistake for maxims of law the current phrases of a past age, and not to lay down as rules of law of the present day the declarations of economists whose theories have long since been abandoned.

The conditions of trade and manufacture are very different from what they have been. The extent of the territory that can be profitably occupied has become much greater and larger undertakings can now be more easily controlled under a single management.

The great combinations of capital are new, and there has not yet been time to ascertain by experience what is the actual effect of uniting many enterprises for the purposes of reducing the cost of production and regulating the prices of commodities.

The obvious effect is to reduce competition and it is competition that has been the ruling force in the struggle for existence in the commercial and industrial world. It was supposed to be competition alone that prevented men from asking more for their products than they were worth and this being removed, there seems to be nothing to restrain the rapacity of those that control any industry; but the natural progress of production is from competition to combination and from combination to co-operation. We have reached the second stage, but have not yet had experience of the effects of combi-

nation on a large scale. Nor do we know whether in the removal of competition there may not come the saving of ill-directed energy, the regulation of supply in accordance with the demand both in place and in time, a saving in the cost of production and a steadiness and a certainty of industrial effort and result and the command of all the capital needed for any useful enterprise, and that out of all these there will not come an increase of actual wealth, a wider distribution of it among the people as stockholders in the great corporations, and a decrease of the cost of commodities to the individual man.

There are grave dangers in the new conditions and it is well that the courts are alert to guard against them, and are zealous to defend the people against the rapacity of the rich and powerful, but in most matters of business it is safer to let the people take care of themselves than for the courts to interfere with liberty of contract and the natural course of trade. If combinations of capital become too large to be managed with safety and profit they will fail. If they serve a useful purpose and are in accordance with the laws of social development they will go on, and the courts will be powerless to stop them. It is the right and duty of the courts to refuse to sanction contracts that are plainly opposed to public policy, but is a power not to be exercised without strong reason and only after the most careful consideration of the facts which go to prove what the best public policy really is. It is not enough to follow the public opinion of the day, nor even to accept judicial opinion of a former time. The question must be examined anew from time to time as conditions change, and in view of latest experience and the best opinion of experts in social science and of practical men of affairs.

REPORT  
OF THE  
COMMITTEE ON COMMERCIAL LAW.

*To the American Bar Association :*

Your Committee on Commercial Law beg leave to submit the following report :

At the Annual Meeting of the Association in 1897, a paper by Mr. Walter S. Logan, a member of the committee, entitled "A Broader Basis of Credit," was referred to this committee with instructions to report what, if in their opinion any, legislation was necessary to carry out the suggestions contained in the paper and to report such bill or bills as in the judgment of the committee should be deemed advisable to carry out such suggestions.

Before the meeting at which the committee was to report on that subject, the present Bankrupt Law was passed, providing to a considerable extent a remedy for many of the evils pointed out in the paper referred to, and in the report of last year this committee referred to the fact of the passing of this law as a reason why they deemed it unnecessary to make any recommendations upon that subject at that time

The Association, however, instructed this committee to inquire into the practical working of the Bankrupt Law and report at this annual meeting any changes therein deemed advisable.

The report of the committee last year also recommended that this work continue from year to year until it should be deemed that further changes in the Bankrupt Law would not be needed.

The general subject of the Bankrupt Law seems thus, very properly, to have been left in the hands of your Committee on Commercial Law.

Mr. Logan's paper above referred to was devoted chiefly to the discussion of the proper provisions of a bankrupt law so far as it related to involuntary bankruptcy. It is, however, the voluntary bankruptcy features of the law that have been brought into special prominence during the last year. The provisions of the law providing for involuntary bankruptcy have not occupied the attention of the courts to any considerable extent up to the present time and we have not had sufficient opportunity to observe the working of those features and do not feel that the time is ripe to make recommendations as to amendments thereto.

If it is the will of the Association that the Committee on Commercial Law shall continue to devote itself to the study of the workings of the Bankrupt Law and to recommendations as to changes and amendments thereto, it will probably be able to make some report next year upon the subject of involuntary bankruptcy and perhaps to recommend some amendments.

The members of the committee have discussed among themselves the advisability of trying to obtain an expression of the views of the mercantile bodies throughout the country upon the subject of the Bankrupt Law and of recommending amendments to the law in the light of such expressions of opinion. During the last year, however, the law has been so new and up to this time it has been in active operation for so short a period, that we have not felt that this proposed work could be done in time for this meeting. We think, however, it may be done during the coming year.

Your Committee on Commercial Law are of the opinion

1. That a Bankrupt Law is wise and beneficent legislation.
2. That the general features of the present Bankrupt Law should have the approval and support of the bar and the commercial community.
3. That whatever amendments are made to the provisions of the law relating to voluntary bankruptcy should be in the line of a better protection to the creditor against fraud in the bankruptcy proceedings.

4. That the amendments to the provisions of the law relating to involuntary bankruptcy should be along the lines of a better remedy for the creditor for fraud, actual or contemplated, on the part of the debtor previous to the institution of bankruptcy proceedings.

5. That the ideal bankrupt law is one that

(a) Allows every honest debtor to procure a speedy discharge from his obligations upon the surrender of all his property ;

(b) Gives every creditor a complete remedy against actual or contemplated fraud on the part of the debtor ;

(c) Punishes all fraud on the part of debtor or creditor with relentless severity.

We are aware that it may be difficult to realize this ideal, but we believe that the committee next year may be able to propose amendments that will do something towards perfecting the law, and we recommend that the Committee on Commercial Law for next year be instructed to make a further report on the subject at the next meeting with such recommendations as they may deem advisable.

Respectfully submitted,

WALTER S. LOGAN,  
*Chairman.*

JAMES HAGERMAN,  
HENRY BUDD,  
JOHN T. MASON, R.,  
LAWRENCE MAXWELL,  
*Committee.*

Buffalo, N. Y., August 28, 1899.



REPORT  
OF THE  
COMMITTEE ON INTERNATIONAL LAW.

The Committee on International Law, to which was referred the resolution presented at the last meeting of the Association in reference to the duty of the government of the United States to the people of the Philippine Islands (Report, page 15) respectfully report :

That they have carefully considered the resolution so referred to them, and are of the opinion that it is not within the province of the Association to express an opinion upon the subject of the resolution. The objects of the Association are fully stated in the first article of the Constitution, and we are of opinion that the subject of the resolution is not included within the statement contained in this article.

All of which is respectfully submitted.

For the Committee, -

EVERETT P. WHEELER,  
*Chairman.*

August 17, 1899.

REPORT  
OF THE  
COMMITTEE ON INTERNATIONAL LAW.

*To the American Bar Association :*

The Committee on International Law respectfully report as follows :

The year that has elapsed since the last meeting of the Association has been so fruitful in important events intimately connected with a subject to which this Association has paid great attention in the past, that we think it appropriate that some record of them should be made in the proceedings of the Association.

All of you who listened to the eloquent remarks of Lord Chief Justice Russell three years ago, in his address on the subject of International Law and Arbitration, will remember that he drew attention to both arbitration and mediation as means which would not only prevent war, but which would lead to the amicable settlement of difficulties between nations, which might, if unsettled, provoke serious misunderstandings and unfriendly relations, even if they did not result in war. You may remember also that he pointed out the difficulties that lay in the path of the complete adoption of these two methods, and yet concluded with the prayer that American and Great Britain, "always self-respecting, each in honor upholding its own Flag, safeguarding its own heritage of right and respecting the rights of others, each in its own way fulfilling its high national destiny, shall yet work in harmony for the Progress and Peace of the World."

You may also remember that during the year following this address, a treaty was negotiated between the United States

and Great Britain for the arbitration of matters in difference between the two countries. This was signed at Washington, January 11, 1897, but unfortunately it did not meet with the approval of two-thirds of the United States Senate, although it did receive the approval of a majority of the members of that body.

This Association at its meeting in 1897, adopted the following resolution :

“ *Resolved*, That the American Bar Association, renewing with emphasis the strong declaration made by it at its last Annual Meeting in favor of the adjustment of controversies between nations by the medium of enlightened international arbitration, expresses its earnest hope that the efforts to establish so beneficent a principle may not in their general spirit and purpose be relaxed ; and that the administration of President McKinley will take such steps as will be appropriate to negotiate just and liberal treaties with foreign powers for the accomplishment of this important result.”

Meanwhile other Associations have not been idle. The Bar Association of the State of New York, and the Bar Association of the State of Virginia, have joined with this Association in urging upon the attention of the United States Government the importance of the adoption by treaty of some permanent provision for arbitrating matters in difference between the United States and other nations.

The International Arbitration Conference which met at Washington in 1896, and the International Arbitration Conferences that have been held from year to year at Lake Mohonk, in this country, and numerous Associations in Europe have united to stimulate and enlighten public opinion on this subject. Eminent jurists and public spirited citizens in all civilized nations have joined their efforts in the same direction.

The first especially notable result of all these endeavors to influence public feeling, which has been embodied in a permanent form during the year, has been the treaty between the Kingdom of Italy and the Argentine Republic. This marks

such an advance in arbitration treaties that your Committee appends a translation of it to this report, in the belief that it will be of interest to the Association. The notable and distinctive features of this treaty are as follows :

1. The parties agree to submit to the decision of arbitrators all disputes, whatever may be their nature.

2. The arbitrators are not to be citizens of the contracting states, nor domiciled nor resident in their territories.

This is a very significant modification of the practice which had previously in most cases prevailed: Formerly each nation which was a party to an arbitration selected one arbitrator from its own citizens, who really was expected to and did in fact act to a large degree as the advocate for the nation appointing him. Under the provisions of this new treaty, however, all the members of the Court are intended to be and would naturally be strictly impartial, and act as judges in every sense of the word.

3. The tribunal is clothed with more extensive powers than International Courts of Arbitration have generally been. For example it is "competent to decide upon the regularity of its Constitution, the validity of the submission and the interpretation of it."

4. After the award is made the tribunal is continued with "power to settle any question which shall arise as to the execution of the decree," and with power also to entertain a motion for a revision of the judgment.

We have now, moreover, to call your attention to a still more marked advance in the history of international arbitration, which may indeed be considered as the most important that has yet taken place.

On the 24th of August, 1898, the Czar issued a circular to all the representatives of foreign nations in St. Petersburg, requesting a conference for the purpose of "uniting in one mighty sheaf the efforts of all those states which sincerely seek to make the great conception of universal peace triumph

over the elements of disturbance and discord." We append to this report a copy of this circular.

In conformity with the request thus made by the Emperor of Russia, twenty-six nations appointed ninety-six delegates. The Queen of Holland requested the Conference to meet at The Hague, and the delegates met at that capital May 18, 1899. The nations represented were as follows :

The United States, Great Britain, Russia, Germany, France, Austria-Hungary, Belgium, China, Denmark, Spain, Greece, Italy, Japan, Luxemburg, Mexico, Holland, Persia, Portugal, Roumania, Servia, Siam, Sweden and Norway, Switzerland, Turkey, Bulgaria and Montenegro, the latter two having no representatives separate from the Russian.

Upon the assembly of the Conference it was agreed that it should be divided into three general sections.

The first on Armaments, the second on the Laws and Customs of War, and the third on Arbitration and Mediation.

The members of the United States delegation on the Committee on Arbitration were Mr. Andrew D. White, Mr. Seth Low and Mr. Frederick W. Holls. All accounts agree that the influence of these delegates, and indeed of the whole American delegation in the Conference, was most important, and that the success which has crowned the efforts of the Conference in the agreement at which it arrived for an arbitration convention, in which all the countries represented should take part, is in large measure due to the skill and intelligence with which the American delegates presented their case.

The result justified the remarkable statement of President Eliot in 1896 :

" The first and principal contribution (by the United States to civilization) is the advance made in the United States, not in theory only, but in practice, toward the abandonment of war as the means of settling disputes between nations, the substitution of discussion and arbitration, and the avoidance of armaments. If the intermittent Indian fighting, and the brief contest with the Barbary corsairs be disregarded, the United States have had only four years and a quarter of international

war in the one hundred and seven years since the adoption of the Constitution. Within the same period the United States have been a party to forty-seven arbitrations, being more than half of all that have taken place in the modern world.

“The questions settled by these arbitrations have been just such as have commonly caused war, namely, questions of boundaries, fisheries, damages inflicted by war or civil disturbances, and the injuries to commerce. Some of them were of great magnitude, the four made under the treaty of Washington (May 8, 1871) being the most important that have ever taken place. Confident in their strength, and relying on their ability to adjust international differences, the United States have habitually maintained, by voluntary enlistment for short terms, a standing army and a fleet which in proportion to the population are insignificant.

“The beneficent effects of this American contribution to civilization are of two sorts: In the first place, the direct evils of war and of preparation of war have been diminished; and, secondly, the influence of the war spirit on the perennial conflict between the rights of the single personal unit and the powers of the multitude that constitute organized society, or, in other words, between individual freedom and collective authority, has been reduced to lowest terms.”

We annex to this report for the sake of convenient and permanent reference the arbitration plan proposed by the American Commission, the British arbitration proposals, and the plan proposed by the Russian government.<sup>1</sup>

After very full and careful discussion in committee and in full conference, a plan for arbitration between nations was finally agreed upon on the 29th day of July, 1899, of which a translation is annexed to this report.

The distinctive and important features of this Convention are numerous.

First. It provides for the establishment of a permanent Court of Arbitration which shall be always open, with a perma-

<sup>1</sup> These copies have been obtained from the Boston Advocate of Peace, whose editor Dr. Trueblood was present at the conference. A copy of the French original which the convention adopted your committee received from the American delegation whose courtesy it gratefully acknowledges.

nent office and officers, charged with the performance of the administrative functions of the Court.

Second. This Court is clothed with the power of determining the extent of its jurisdiction under the agreement of submission and any treaties which may be in force relating to the subject and also of regulating its procedure whenever the parties do not agree upon special rules which shall be binding for the particular controversy.

Thirdly. Provision is made for what the Convention designates "Special Mediation." The character of the Convention on this subject cannot be better stated than in the words of Mr. Frederick W. Holls, who introduced the article relating to it.

"It proceeds upon the theory that in the event of an acute conflict, it is better that mutual friends should carry on the discussion than the parties themselves. Accordingly each party to the litigation appoints two seconds, just as in a duel, and the affair between them is, for a certain time, which, unless another time is stipulated, is thirty days, exclusively confided to the hand of the two seconds. If they do not succeed in preventing an outbreak of hostilities, they will continue to watch, each for its principal, and it is their duty to avail themselves of every opportunity for re-establishing peace. The late Spanish-American war may be taken as a very good example where this Special Mediation might have had good results. Arbitration was impossible. Mediation was tried and failed. Even Special Mediation would probably not have prevented an outbreak of hostilities, but if we had had England as a second and Spain had had France, it is at least a possibility that after the defeat at Manila they would have reported to Spain that her honor was satisfied. They certainly would have done so after the battle of Santiago, and, in either case much human suffering and much treasure would have been saved. Another particular advantage of the article, which I pointed out in my speech when I presented it, and which M. Deschamps has referred to in his report, is the fact that it gives to diplomacy an effective but inoffensive form of an ultimatum. Heretofore, there always was a time in every conflict when the representative of one of the Powers had to say to the representative of the other—"One more step on your part means war." Under

The Hague Convention this would be changed into "One more step and we shall have to appoint a second." This announcement is just as grave as the first, but still the amour propre of the other party is not wounded—the ultimatum has in fact been spoken, but no offence has yet been given."

It will be remembered that Lord Chief Justice Russell suggested something of the sort in his address before this Association, and we are told that it was also suggested by Count Nelidoff, the great Russian diplomat, years ago. Nevertheless, the fact remains that what had been conceived possible by these two eminent men, the American delegation formulated in so clear and convincing a manner that it received the approval of the Conference.

Fourth. There is also a provision authorizing any of the signatory powers to call to the attention of the States engaged in a controversy the existence of the Court of Arbitration, and the obligations which the signatory Powers have taken upon themselves by agreeing to the Convention. This provision seems to your Committee of real value. What is very desirable when a controversy arises between nations, is that it should be made as easy as possible to submit this controversy to arbitration, and that the influence of other nations should be used in that direction. We believe experience would show that in international controversies, as well as in private controversies, the statement by friends that they ought to be settled will tend to promote such settlement, especially when as in the present case the signatory Powers have agreed that such suggestion shall be considered as altogether friendly. This article originated with the French delegation.

Fifth. The provision for International Commissions of Inquiry.

This idea was originally suggested by the administration of President Cleveland in the Commission of Inquiry proposed by it in reference to the Venezuelan boundary. This was taken up by the Russian delegation to the Conference and was approved by it.



Your committee feel that the signal success which has thus attended the various endeavors that have been made to convince the nations of the civilized world that it is both their duty and their interest to adjust by peaceable measures, wherever it may be possible, all cases of difference between them, is a subject of great congratulation to all who have taken any part in this important movement.

It marks a distinct advance in the progress of civilization. At the same time we are very sensible that much remains to be done to stimulate and inform public opinion on this subject. The treaty negotiated at The Hague is not yet ratified. It is of the first importance that it should be ratified, and ratified by a decisive vote. We urge, therefore, upon every member of the Association to do all in his power to arouse public attention to this subject, and to direct it in favor of the ratification by the Senate of the United States of the action of the delegates of our country at The Hague. And we recommend for adoption by the Association the following resolution :

*Resolved*, That the American Bar Association renews with emphasis the strong declarations made by it in 1896 and 1897 in favor of the adjustment of controversies between nations by the medium of enlightened international arbitration, expresses its great satisfaction that the efforts which have been made to establish so beneficent a principle have culminated in the adoption at The Hague of a wise and statesmanlike agreement for that purpose, and its earnest hope that the Senate of the United States will approve the Convention at The Hague, and that the Administration will take such steps as may be proper to carry it into effect

All of which is respectfully submitted.

EVERETT P. WHEELER,  
RICHARD M. VENABLE,  
MARTIN DEWEY FOLLETT,  
GEORGE R. PECK,  
JAMES B. MOORE,

August 15, 1899.

*Committee on International Law.*

## THE ITALY-ARGENTINE TREATY.

ARTICLE I.—The high contracting parties bind themselves to submit to the decision of arbitration all disputes, whatever may be their nature, which may arise between the said parties during the period of the existence of this treaty, when such cannot be adjusted in a friendly way by the ordinary course of diplomacy. This provision for arbitration extends to disputes arising out of acts occurring prior to the negotiation of this treaty.

ARTICLE II.—The high contracting powers will conclude a special convention for each case, to determine the precise subject of the litigation, the scope of the powers of the arbitrators, and any other matters having reference to procedure.

In default of such convention, the tribunal under the instruction of the parties shall determine, as between the contentions of the respective parties, the points of law and of fact which must be decided in order to bring the litigation to an end. In default of such a convention, or in points not covered by it, the following rules shall be observed :

ARTICLE III.—The tribunal shall be composed of three judges. Each of the contracting parties shall appoint one. The two arbitrators thus chosen shall choose the third. If they fail to agree in a choice, the third arbitrator shall be chosen by the head of a third State, who shall be requested to make the selection. This State shall be designated by the arbitrators already appointed. If they do not agree upon the head of the State to be named, the President of the Swiss Confederation and the King of Sweden and Norway shall be asked in turn to name the third arbitrator. The third arbitrator thus chosen shall be president of the tribunal.

The same person cannot be named in succession as third arbitrator.

The arbitrators shall not be citizens of the contracting states, nor domiciled nor resident in their territories. They must

have no interest in the questions which constitute the subject of arbitration.

ARTICLE IV.—If an arbitrator, for any reason whatever, cannot undertake the office to which he has been appointed, or if he cannot continue in it, his place shall be filled according to the same procedure used in his appointment.

ARTICLE V.—In default of a special agreement between the parties, the tribunal shall designate the time and the place of its session, which must be outside the territory of the contracting parties. It shall choose the language that shall be employed, the methods of examination, the forms and limitations to be imposed upon the parties, the procedure to be followed; and, in general, it shall adopt all the measures necessary for its action, and decide all the questions of procedure which may arise in the course of the discussion.

The parties, on their part, pledge themselves to place at the disposal of the arbitrators all the means of information within their power.

ARTICLE VI.—An agent of each of the parties shall be present at the sessions, and he shall represent his government in all matters pertaining to the arbitration.

ARTICLE VII.—The tribunal shall be competent to decide upon the regularity of its constitution, the validity of the submission, and its interpretation.

ARTICLE VIII.—The tribunal in its decisions shall follow the principles of international law, unless the submission provides for the application of special rules, or authorizes the arbitrators to render their decision as friendly counsellors.

ARTICLE IX.—Unless provision is made to the contrary, the decisions of the tribunal shall be valid when made by a majority vote of the arbitrators.

ARTICLE X.—The judgment rendered shall decide definitely every point of the litigation. It shall be drawn up in duplicate

original, and signed by all the arbitrators. If one of the arbitrators refuses to sign, a note of the refusal shall be made in the judgment, which shall take effect if it bears the signature of a majority of the arbitrators. The judgment shall not contain any dissenting opinion.

Notice of the judgment shall be given to each party through the medium of its representative before the tribunal.

Article XI.—Each of the parties shall bear its own expenses, and one-half the expenses of the arbitral tribunal.

Article XII.—The judgment, legally pronounced, shall settle, within the limits of its applicability, the matters in dispute between the parties.

It shall indicate the limit of time within which it is to be executed. The tribunal shall have the power to settle any questions which shall arise as to the execution of the decree.

Article XIII.—There shall be no appeal from the judgment, and its execution shall be confided to the honor of the nations signing this treaty.

A revision of the judgment, before the same tribunal which has pronounced it, may be asked for before the execution of the judgment. First, if it has been based upon a false or erroneous document; second, if the decision in whole or in part has resulted from an error of fact, positive or negative, respecting the acts or documents presented on the trial.

Article XIV.—This treaty shall continue in force for a period of ten years from the exchange of ratifications. If notice to the contrary is not given six months before the date of its expiration, it shall be understood that it is renewed for a new period of ten years, and so thereafter.

Article XV.—This treaty shall be ratified, and the ratifications exchanged, at Buenos Ayres, within six months from this date.

Done at Rome, in duplicate, July 23, 1898.

CANEVARO.

MORENO.

## THE CZAR'S CIRCULAR.

Nicholas II, the Emperor of Russia, has directed his Minister of Foreign Affairs to present to all the representatives of foreign nations in St. Petersburg the following communication :

The maintenance of general peace and the possible reduction of the excessive armaments which weigh upon all nations present themselves in the existing condition of the whole world as an ideal towards which the endeavors of all governments should be directed.

The humanitarian and magnanimous purposes of His Majesty the Emperor, my august master are entirely won over to this object.

In the conviction that this lofty aim is in conformity with the most essential interests and legitimate wishes of all the powers, the Imperial Government thinks the present moment would be favorable for an inquiry, by means of international discussion, as to the most effective means of securing to all the peoples the benefits of a real and durable peace, and, above all, of putting a stop to the progressive development of the present armaments.

In the course of the last twenty years, the longings for general pacification have been especially confirmed in the conscience of civilized nations. The preservation of peace has been put forward as the object of international policy. It is in its name that the great States have concluded between themselves powerful alliances. It is the better to guarantee peace that they have developed their military forces in proportions hitherto unknown, and still continue to increase them without shrinking from any sacrifice.

But all these efforts have not yet brought about the beneficent result of the pacification which all desire.

Financial charges, constantly increasing, strike at public prosperity at its source. The intellectual and physical strength of the nations, as well as labor and capital, are, for the most part, diverted from their natural application and unproductively consumed. Hundreds of millions are expended for terrible

engines of destruction, which, though to-day regarded as the last word of science, will to-morrow lose all value because of some new invention in the same field. National culture, economic progress, and the production of wealth, are paralyzed or perverted in development.

Meanwhile, in proportion as the armaments of each power increase, do they less and less fulfill the object which the governments have proposed. Economic crises, due in great part to the system of *armaments à outrance*, and the continual danger which lies in this accumulation of war material, transform the armed peace of our days into a crushing burden which the peoples bear with more and more difficulty. It seems evident that if this state of things continue it will inevitably lead to the very cataclysm which it is desired to avert, of which the horrors, even in anticipation, make every thinking man shudder.

For all nations it is a supreme duty to-day to put an end to these constant armaments, and to seek means for warding off the calamities which threaten the whole world.

Filled with this sentiment, his Majesty has been pleased to order that I propose to all the governments which have accredited ministers at the Imperial Court, the meeting of a conference which should occupy itself with this great problem.

This Conference, by the help of God, would be a happy presage of the century now about to open. It would unite in one mighty sheaf the effort of all those states which sincerely seek to make the great conception of universal peace triumph over the elements of disturbance and discord. It would at the same time cement their agreement by their united consecration to those principles of equity and right on which rest the security of states and the welfare of peoples.

CTE MOURAVIEFF.

St. Petersburg, August 24, 1898.

## THE BRITISH ARBITRATION PROPOSALS.

ARTICLE 1.—With the view of facilitating an immediate recourse to arbitration on the part of those States who may not succeed in settling their differences by diplomatic means, the signatory Powers have undertaken to organize in the following manner a permanent tribunal of arbitration, accessible at all times, and governed by the code of arbitration prescribed in this Convention, so far as it may be applicable, and in conformity with stipulations made in arrangements decided upon between the parties in litigation.

ARTICLE 2.—To this effect a central office will be established permanently at X, where the archives of the tribunal will be preserved, and which will be entrusted with the conduct of its official business. A permanent secretary, an archivist, and sufficient staff will be appointed who will reside on the spot. The office will be the intermediary for communications relative to the meeting of the tribunal at the instance of the parties in litigation.

ARTICLE 3.—Each signatory power will transmit to the others the names of two persons of its nationality, recognized in their country as jurists or publicists of merit, enjoying the highest reputation for integrity, disposed to accept the functions of arbitrators, and possessing all the necessary qualities. Persons thus designated will be members of the tribunal, and will be inscribed as such in the central office. In case of the death or retirement of a member of the tribunal, provision will be made for his being replaced in the same manner as for his nomination.

ARTICLE 4.—The signatory Powers, desiring to apply to the tribunal for the pacific settlement of differences which may arise amongst them, will notify this desire to the secretary of the central office, which will then furnish them immediately with a list of the members of the tribunal. The Powers in question will thereupon select from this list the number of arbitrators

agreed upon in the arrangements. They will have, moreover, the power of adding arbitrators other than those whose names are inscribed in the list. The arbitrators thus chosen will form the tribunal for the arbitration, and will meet on the date fixed by the parties in litigation. The tribunal will sit generally at X, but will have the power of sitting elsewhere, and of changing its place from time to time, according to circumstances, as may suit its convenience, or that of the parties in litigation.

ARTICLE 5.—Any State, although not a signatory Power, will be able to have recourse to the tribunal under the conditions prescribed by the regulations.

ARTICLE 6.—The Government X. . . . is directed to install at X. . . . in the name of the signatory Powers, as soon as possible after the ratification of this Convention, a permanent Council of Administration, composed of five members and one secretary. It will be the duty of the Council to establish and organize a central office, which will be under its direction and control. It will issue from time to time the necessary regulations for the proper working of the central office, and will also settle all questions which may arise concerning the working of the tribunal, or which may be submitted to it by the Central Bureau. The Council will have absolute power as regards the nomination, the suspension, or the dismissal of all functionaries or employees. It will fix salaries and control general expenses. The Council will elect its president, who will have a preponderating voice. The presence of three members will suffice to constitute a quorum, and decisions will be taken by a majority of votes. The fees of the members of the Council will be fixed by agreement between the signatory Powers.

ARTICLE 7.—The signatory Powers agree to contribute in equal shares the expenses of the Administrative Council and the central office. The expenses of each arbitration will be chargeable in equal parts to the States in litigation.



## ARBITRATION PLAN PROPOSED BY THE AMERICAN COMMISSION.

*Resolved*, That in order to aid in the prevention of armed conflicts by pacific means, the representatives of the sovereign powers assembled together in this Conference be, and they hereby are requested to propose to their respective governments, a series of negotiations for the adoption of a general treaty, having for its object the following plan, with such modifications as may be essential to secure the adhesion of at least nine sovereign powers, four of whom at least shall have been signatories of the declaration of Paris, the German Empire being, for this purpose, the successor of Prussia, and the Kingdom of Italy the successor of Sardinia.

ARTICLE 1.—The tribunal shall be composed of persons nominated on account of their personal integrity and learning in international law by a majority of the members of the highest Court at the time existing in each of the adhering States, one from each sovereign State participating in the treaty, and who shall hold office until their successors are appointed.<sup>1</sup>

ARTICLE 5.—The bench of judges for each particular case shall consist of as many as may be agreed upon by the litigating nations, either of the entire bench or of any smaller number not less than three, to be chosen from the whole Court. In the event of a bench of three judges only, no one of those shall be a native subject or citizen of a State whose interests are in litigation in the case.

ARTICLE 6.—The general expenses of the tribunal are to be equally divided or upon some equitable basis between the adherent powers; but those arising from each particular case shall be provided for as may be directed by the tribunal. The presentation of a case wherein one or both of the parties may be a non-adherent State shall be admitted only upon condition of a mutual agreement that the States so litigating shall pay

<sup>1</sup> The Committee have not been able to obtain a copy of Articles 2, 3 and 4.

respectively a sum to be fixed by the tribunal for the expenses of adjudication. The salaries of the judges may be so adjusted as to be paid only when they are actually engaged in the duties of the Court.

ARTICLE 7.—Every litigant before the international tribunal shall have the right to a hearing of the case before the same judges within three months of the notification of the decision, on alleging newly discovered evidence, or submitting questions of law not heard and decided at a former hearing.

ARTICLE 8.—This treaty shall become operative when nine sovereign States, such as are indicated in the resolution, shall have ratified its provisions.

**MEMORANDUM FROM THE COMMISSIONERS OF THE UNITED  
STATES, SUBMITTED WITH THEIR PROJECT FOR A  
PERMANENT INTERNATIONAL TRIBUNAL.**

“The proposal herewith submitted takes its form as a resolution looking to action outside of the Conference from our instructions. The proposal shows the earnest desire of the President of the United States for a permanent international tribunal for the conduct of arbitration between nations and the willingness of the President to assist in the establishment of such a tribunal upon the general lines indicated.

“The Commissioners from the United States are ready, without insisting upon the form of their own recommendations, to try to develop the proposals heretofore submitted to the Conference, so that they shall embody what is essential in this plan. It seems to the United States Commissioners that it ought not to be difficult to associate with the several proposals, as they may eventually be developed for mediation in various forms of international inquiry and arbitration by special arrangement, a plan for a permanent tribunal of arbitration, which will embody what is essential in the American resolution.”

## THE RUSSIAN ARBITRATION PLAN.

Elements for the elaboration of a convention to be concluded by the Powers participating in the Hague Conference.

## PART I. GOOD OFFICES AND MEDIATION.

ARTICLE 1.—In order to prevent, as far as possible, recourse to force in international relations, the signatory Powers are agreed to employ every effort to bring about by pacific means the solution of conflicts which may arise among them.

ARTICLE 2.—In consequence the signatory Powers are decided, in the event of serious disagreement or conflict, before appealing to arms to have recourse, as far as circumstances will permit, to the good offices or mediation of one or more friendly Powers.

ARTICLE 3.—In the event of mediation being spontaneously accepted by the States in conflict, the aim of the mediatory Government consists in endeavoring to bring about a conciliation between the States.

ARTICLE 4.—The role of the mediatory Government ceases from the moment when the compromise proposed by it, or the basis of a friendly agreement which it may have suggested, shall not have been accepted by the States in conflict.

ARTICLE 5.—Should the Powers consider it advisable, in the event of a serious disagreement or conflict between civilized states regarding questions of political interest, the Powers not implicated in the conflict shall offer, of their own initiative, so far as circumstances are favorable, their good offices or their mediation to the disputing states in order to remove the difference that has arisen by proposing an amicable solution which, without affecting the interests of other States, shall be of a conciliatory nature in the best interests of the parties in dispute.

ARTICLE 6.—It remains well understood that mediation and the employment of good offices, either at the instance of

the parties in dispute or of neutral Powers, shall bear strictly the character of friendly counsel and in no way of compulsory force.

**PART II.—INTERNATIONAL ARBITRATION.**

**ARTICLE 7.**—In so far as regards a dispute relating to questions of right, and primarily to those affecting the interpretation or application of treaties in force, arbitration is recognized by the signatory Powers as being the most efficacious and most equitable means of settling these disputes in a friendly manner.

**ARTICLE 8.**—The contracting Powers therefore undertake to have recourse to arbitration in cases relating to questions of the above mentioned order, so far as these affect neither the vital interests nor the national honor of the parties in dispute.

**ARTICLE 9.**—Each state remains the sole judge of the question whether this or that case shall be submitted to arbitration, excepting the cases enumerated in the following article, where the signatory Powers consider arbitration as compulsory.

**ARTICLE 10.**—After the ratification of the present act by all the signatory Powers, arbitration is obligatory in the following cases, so far as it affects neither the vital interest nor the national honor of the contracting parties: in the event of differences or disputes relating to pecuniary damages sustained by a State; in the event of disagreements relating to the interpretation or application of treaties and conventions hereafter mentioned—postal, telegraph, and railway treaties and conventions, and those relating to the protection of submarine cables; agreements as to the means for preventing the collision of ships at sea; conventions relating to the navigation of international rivers and interoceanic canals; conventions regarding the protection of literary and artistic property, industrial property, patents, and trade marks; monetary and metrical conventions; sanitary conventions, etc.

**ARTICLE 11.**—The above list may be completed by subsequent arrangements among the signatory Powers. Moreover

each Power shall be able to enter into a special arrangement with another Power for the purpose of rendering arbitration obligatory in the above-mentioned cases before the general ratification, and also to extend the scope of arbitration to all cases which it is considered possible to submit to it.

ARTICLE 12.—In all other cases of international conflicts not mentioned in the above articles, arbitration, while certainly being very desirable and recommended by the present act, is nevertheless purely facultative,—that is to say, it can only be applied on the spontaneous initiative of one of the parties in dispute, and with the express consent of the other parties.

ARTICLE 13.—With the view of facilitating recourse to arbitration and its application, the signatory Powers are agreed to formulate a common arrangement for the employment of international arbitration, and for the fundamental principles to be observed in the drawing up of the rules of procedure to be followed pending the inquiry into the dispute, and the pronouncement of the decision of the arbitrators. The application of these fundamental principles, as also of the arbitration procedure indicated in the appendix to the present article, may be modified in virtue of a special arrangement between states which may have recourse to arbitration.

#### PART III.—INTERNATIONAL COMMISSIONS OF INQUIRY.

ARTICLE 14.—In cases in which divergencies of views occur between the signatory states, in connection with local circumstances giving rise to litigation of an international character, which cannot be settled by the ordinary diplomatic means, but in which neither the honor nor the vital interests of these states are engaged, the Governments interested agree to institute an international commission of inquiry in order to arrive at the causes of the disagreement, and to clear up on the spot, by an impartial and conscientious examination, all questions of fact.

ARTICLE 15.—These international commissions shall be constituted as follows: Each Government interested shall appoint

two members, and the four members united shall chose a fifth member, who shall at the same time be president of the commission. If the votes shall be divided for the choice of a president, the two Governments interested shall appeal either to another Government or to a third party, who shall appoint the president of the commission.

ARTICLE 16.—Governments between which a grave disagreement or conflict shall arise under the circumstances indicated above shall engage to furnish the commission of inquiry with all means and facilities necessary for a thorough and conscientious study of the facts.

ARTICLE 17.—The International Commission of Inquiry, after having acquainted itself with the circumstances out of which the disagreement or conflict arose, shall submit to the Governments interested a report signed by all the members of the Commission.

ARTICLE 18.—The report of the Commission of Inquiry shall in no wise have the character of an arbitration judgment. It leaves the Governments in conflict at full liberty either to conclude a friendly arrangement on the basis of the said report, or to have recourse to arbitration by concluding an agreement *ad hoc*, or else by resorting to the active measures allowable in the mutual relations between nations.

The Russian proposal is followed by a draft code of arbitration.

## INTERNATIONAL PEACE CONFERENCE.

## CONVENTION FOR THE PEACEFUL ADJUSTMENT OF INTERNATIONAL DIFFERENCES.

## TITLE FIRST.—THE MAINTENANCE OF GENERAL PEACE.

ARTICLE 1.—For the purpose of preventing as much as possible recourse to force in the relations between states, the Signatory Powers agree to employ all their efforts to insure the peaceful adjustment of international differences.

## TITLE SECOND.—OF FRIENDLY OFFICES AND MEDIATION.

ARTICLE 2.—In case of serious dissension or of conflict, before the appeal to arms, the Signatory Powers agree to have recourse as far as circumstances will permit, to the friendly offices or to the mediation of one or of several friendly Powers.

ARTICLE 3.—Independently of this resort, the Signatory Powers think it to be useful, that one or more powers which have no part in the conflict may offer of their own volition, so far as circumstances may make it appropriate, their friendly offices or their mediation, to the states engaged in the conflict. The right to offer these friendly offices or mediation is absolute in the Powers which take no part in the conflict, even during hostilities. The exercise of this right shall never be considered by either of the parties to the contest as an unfriendly act.

ARTICLE 4.—The duty of a mediator consists in conciliating the opposing claims, and appeasing the resentment which may have sprung up between the states engaged in the conflict.

ARTICLE 5.—The duties of a mediator cease from the moment when it is officially declared by either party to the strife, or by the mediator himself, that the methods of conciliation proposed by him are not accepted.

ARTICLE 6.—Friendly offices and mediation, whether at the request of the parties in conflict, or on the proposal of Powers which take no part in the conflict, have solely the character of advice, and shall never be considered as binding upon either party.

ARTICLE 7.—The acceptance of mediation will not have the effect, in the absence of an agreement to the contrary, to interrupt, to postpone or to interfere in any way with mobilization, and other measures preparatory to war. If it is undertaken after the beginning of hostilities, it will not interrupt, in the absence of an agreement to the contrary, the military operations which are in progress.

ARTICLE 8.—The signatory Powers agree to recommend the application, whenever circumstances will allow, of special mediation under the following forms :

In the case of grave differences which threaten war, the states in conflict will each choose a Power to which they will confide the duty of entering into a direct negotiation with the Power chosen by the other side, for the purpose of preventing the breaking off of peaceful relations. During the continuance of this authority, the term of which in the absence of an agreement to the contrary, shall not exceed thirty days, the States engaged in the contest will cease all direct negotiation in reference to the subject of the conflict, which is to be considered as being exclusively in the hands of the mediating Powers. They are bound to use all their efforts to settle the differences peaceably. In case of definite breaking off of peaceful relations, these Powers remain entrusted with the common duty of taking every opportunity to re-establish peace.

TITLE THIRD.—OF INTERNATIONAL COMMISSIONS OF INQUIRY.

ARTICLE 9.—In controversies of an International character, which do not involve either the honor or the essential interest of either party, and proceed from a difference in regard to



questions of fact, the signatory Powers think it to be useful that parties who have not been able to agree by the ordinary methods of diplomacy, should establish as far as circumstances will allow, an International Commission of Inquiry, charged with the duty of facilitating the settlement of these controversies by determining the questions of fact by means of an impartial and thorough inquiry.

ARTICLE 10.—International Commissions of Inquiry are to be constituted by special agreement between the parties to the controversy.

The agreement in reference to the inquiry shall specify the facts which are to be examined, and the extent of the powers of the Commission. It shall regulate the procedure of the Commission. Investigation is to be made after having heard the adverse parties. The procedure and the time allowed for the investigation, so far as they are fixed by the agreement for the inquiry, shall be determined by the Commission itself.

ARTICLE 11.—International Commissions of Inquiry are to be formed, in the absence of an agreement to the contrary, in the manner pointed out in the 31st article of the present Convention.

ARTICLE 12.—The Powers in controversy, engage to furnish to the International Commission of Inquiry, in the fullest way which they think to be possible, all the means and facilities necessary for the complete knowledge and the precise determination of the facts in question.

ARTICLE 13.—The International Commission of Inquiry will present to the Powers in controversy its report signed by all the members of the Commission.

ARTICLE 14.—The report of the International Commission of Inquiry being limited to the determination of questions of fact, has in no degree the character of an Arbitral judgment. It leaves to the Powers in controversy entire freedom as to the effect to be given to its determination.

## TITLE FOURTH.—OF INTERNATIONAL ARBITRATION.

## CHAPTER FIRST.—OF ARBITRAL JUDGEMENT.

ARTICLE 15.—International Arbitration has for its object the determination of controversies between States by Judges of their own choice, upon the basis of respect for law.

ARTICLE 16.—In questions of a judicial character, and especially in questions of the interpretation or application of treaties, arbitration is acknowledged by the signatory powers as the most efficacious and at the same time the most just method of deciding controversies which have not been determined by diplomacy.

ARTICLE 17.—An agreement of arbitration may be made in reference to disputes already existing, or those which may hereafter exist. It may relate to every kind of controversy, or solely to controversies of a particular character.

ARTICLE 18.—An agreement to arbitrate implies the obligation to submit in good faith to the decision of the arbitral tribunal.

ARTICLE 19.—Independently of general or special treaties which already impose the obligation to have recourse to arbitration on the part of any of the signatory Powers, these Powers reserve to themselves the right to make either before the ratification of the present Act, or subsequent to that date, new agreements, general or special, with a view of extending the obligation to submit controversies to arbitration to all cases which they think possible so to submit.

CHAPTER SECOND.—OF THE PERMANENT COURT OF  
ARBITRATION.

ARTICLE 20.—For the purpose of facilitating the immediate recourse to arbitration of International differences which have not been settled by diplomacy, the signatory Powers do agree to organize a permanent Court of Arbitration, always open, and exercising its powers, in the absence of an agreement to

the contrary, conformably to the rules of procedure included in the present Convention.

ARTICLE 21.—This permanent Court shall have jurisdiction of all cases of arbitration, unless there has been an agreement between the parties for the establishment of a special arbitration.

ARTICLE 22.—An International Bureau shall be established at The Hague which shall serve as the clerk's office for this Court. This Bureau shall be the medium of all communications relating to the meetings of the Court. It shall preserve its archives and carry on all its administrative business. The signatory Powers agree to communicate to the International Bureau at The Hague a certified copy of every agreement of arbitration made between them and of every judgment of an arbitral tribunal, relating to them, rendered by special tribunals. They engage also to furnish the Bureau with the laws, rules, and documents declaring the execution of the judgments rendered by the Court.

ARTICLE 23.—Each signatory Power shall designate during the period of three months which shall follow the ratification by it of the present Act, four persons at the most, of acknowledged skill on questions of International law, possessing the highest moral reputation, and willing to accept the office of arbitrators. Persons thus appointed shall be enrolled by the name of members of the Court, on a list which shall be furnished to all the signatory Powers by the Bureau. Every change in the list of arbitrators shall be brought by the Bureau to the knowledge of the signatory Powers. Two or more Powers may unite in the designation of one or more members of the Court. The same person may be appointed by different Powers. Members of the Court shall be named for a term of six years. They may be reappointed. In case of death or resignation of a member of the Court the vacancy shall be filled in the manner designated for his appointment.

ARTICLE 24.—When the signatory Powers wish to bring before the permanent Court the settlement of a controversy

which has arisen between them, the choice of arbitrators selected to constitute the tribunal, which shall have jurisdiction to determine this difference, shall be made from the general list of members of the Court.

If the arbitral tribunal be not constituted by the special agreement of the parties, it shall be formed in the following way :

Each party shall name two arbitrators, and these shall choose an umpire. In case they do not agree, the choice of the umpire is confined to a third Power designated by the agreement of the parties. If they do not agree, each party shall select a different Power, and the choice of the umpire shall be made by the united action of the Powers thus selected. The tribunal being thus made up, the parties shall notify to the Bureau their decision to bring their case before the Court, and the names of the arbitrators. The arbitral tribunal shall meet at a time fixed by the parties.

The members of the Court in the exercise of their duties, and while passing from their own country, shall possess the privileges and immunities of members of the Diplomatic Corps.

ARTICLE 25.—The arbitral tribunal shall ordinarily sit at The Hague. The place of its session, except in case of vis major, can only be changed by the tribunal with the consent of the parties.

ARTICLE 26.—The International Bureau at The Hague is authorized to put its offices and its staff at the disposal of the signatory Powers for the performance of the duties of every special arbitral tribunal.

The jurisdiction of the Court may be extended under conditions prescribed by its rules, to controversies existing between Powers that have not signed this Convention, or between Powers who have signed it and Powers who have not signed it, if the parties agree to submit to its jurisdiction.

ARTICLE 27.—The signatory Powers acknowledge it as a duty in every case in which a sharp conflict threatens to break out between two or more of them, to remind these Powers that the permanent court is open to them. Consequently they declare that the fact of reminding the parties in conflict of the terms of the present Convention, and the advice given in the higher interest of peace, to bring their matters in difference before the permanent court, can never be considered as other than friendly offices.

ARTICLE 28.—A permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague, and of the Minister of Foreign Affairs of the Netherlands, who shall act as President, shall be constituted in that city as soon as possible after the ratification of the present Act by at least nine Powers. This Council shall be charged with the duty of constituting and organizing the International Bureau, which shall remain under its direction and control.

It shall notify the Powers of the constitution of the Court and provide for its installation.

It shall determine the rules of practice and all other necessary rules.

It shall decide all administrative questions which may arise relating to the performance by the Court of its official duties.

It shall have power in relation to the appointment, suspension from office, or removal, of the officers and clerks of the Bureau.

It shall determine their allowances and salaries, and have charge of the general expenses.

Five members present at a meeting regularly called shall constitute a quorum. Decision shall be made by a majority of votes. The Council shall communicate without delay to the signatory Powers the rules adopted by it. It shall communicate to them every year a report as to what has been done by the Bureau, the performance of its administrative functions, and its expenses.

ARTICLE 29.—The expenses of the Bureau shall be borne by the signatory Powers in the proportion established for the International Bureau of the Universal Postal Union.

CHAPTER THIRD.—OF THE ARBITRAL PROCEDURE.

ARTICLE 30.—For the purpose of promoting the development of arbitration the signatory Powers have determined upon the following rules, which shall be applicable to the arbitral procedure unless the parties agree upon different rules.

ARTICLE 31.—Powers which resort to arbitration will sign a special submission in which shall be briefly stated the subject of the litigation and the extent of the powers of the arbitrators. This submission implies an agreement by each party to submit in good faith to the decision of the arbitral tribunal.

ARTICLE 32.—The powers of the Court of Arbitration may be conferred upon a single arbitrator or upon several arbitrators designated by the parties to the controversy, as they may agree. Or they may be selected by them from among the members of the permanent Court of Arbitration established by the present Act. In default of the constitution of the tribunal by the direct agreement of the parties, it shall be formed in the following manner :

Each party shall name two arbitrators, and these between them shall choose the umpire. In case they do not agree the choice of the umpire shall be given to a third Power designated by the agreement of the parties. If they do not agree on this point each party shall designate a separate Power and the choice of the umpire shall be made by agreement between the Powers thus designated.

ARTICLE 33.—When a sovereign or the head of a State is chosen for an arbitrator, the arbitral procedure shall be determined by him.

ARTICLE 34.—The umpire shall preside over the tribunal. When there is no umpire the tribunal shall itself name its presiding officer.

ARTICLE 35.—In case of death, resignation, or absence for any cause of one of the arbitrators, the vacancy shall be filled in the way pointed out for his appointment.

ARTICLE 36.—The place where the tribunal shall sit is to be fixed by the parties. If they do not fix a different place, the tribunal shall sit at The Hague. The place of session thus determined, shall not except in case of vis major, be changed by the tribunal except with the consent of the parties.

ARTICLE 37.—The parties have the right to name delegates or agents who shall represent them before the tribunal, and serve as intermediaries between them and it. They are also authorized to employ for the defence of their rights and interests before the Court, counsellors or lawyers named by them for that purpose.

ARTICLE 38.—The tribunal shall decide upon the languages which may be used, and the use of which shall be authorized at its sessions.

ARTICLE 39.—The procedure of the arbitral tribunal may in general be divided into two distinct parts: the examination of evidence and the hearing. Examination of evidence shall consist in the presentation made by the respective agents to the members of the court and to the other side, of all printed or written instruments, and of all documents containing the matters pleaded in the cause. This communication shall take place in the form, and at the times fixed by the tribunal by virtue of Article 48.

The hearing shall consist in the oral discussion of the matters presented by the parties before the tribunal.

ARTICLE 40.—Every document produced by either party shall be communicated to the other.

ARTICLE 41.—The oral hearings shall be under the direction of the President. They shall be public only in accordance with a decision of the tribunal made with the consent of the parties. They shall be reported in official statements

edited by secretaries named by the President. These official statements shall be the only official record of the hearing.

ARTICLE 42.—After the taking of evidence has been closed the tribunal shall have the right to exclude from the hearing all additional acts or documents which either party may desire to submit without the consent of the other.

ARTICLE 43.—The tribunal shall, however, have the right to take into consideration additional acts or documents which the attorney or counsel for the parties may call to its attention. In this case the tribunal has the right to require the production of these acts or documents, but copies of them must be furnished the adverse parties.

ARTICLE 44.—The tribunal may, moreover, require the agents of the parties to produce all official documents and require all necessary explanations. In case of refusal the tribunal may enter notice thereof upon its records.

ARTICLE 45.—The attorneys and counsel for the parties are authorized to present to the tribunal all the pleas that they deem useful for the defence of their cause.

ARTICLE 46.—They have the right to take exceptions, and raise objections. The decisions of the tribunal on these points shall be final, and shall not give rise to any further discussion.

ARTICLE 47.—The members of the tribunal have the right to put questions to the attorneys and counsel of the parties, and to demand from them further explanations on doubtful points. Neither questions put nor observations made by the members of the tribunal during the course of the hearing, shall be recorded as the expression of the opinion of the court or of any of its members.

ARTICLE 48.—The tribunal is authorized to determine its own jurisdiction, by interpreting the submission, as well as any other treaties which may be invoked in the matter, and also by applying the principles of International Law.



ARTICLE 49.—The tribunal has the right to make rules of procedure for the direction of the litigation, to determine the forms and the time within which each party must submit its motions, and to determine all the formalities which shall regulate the taking of evidence.

ARTICLE 50.—The attorneys and counsel of the parties having presented all explanations and briefs in support of their cause, the President shall pronounce the hearing closed.

ARTICLE 51.—The deliberations of the tribunal shall be had in secret session.

A decision shall be had by a vote of the majority of the members of the tribunal. The refusal of any member to take part in the vote must be specified in the official statement of its proceedings.

ARTICLE 52.—The arbitral judgment, when determined by a majority vote shall be accompanied by an opinion, reduced to writing, and signed by each member of the tribunal. Those of the members of the Court who are in the minority may, when signing, specify their dissent.

ARTICLE 53.—The arbitral judgment shall be read at a public session of the tribunal, the attorneys and counsel for the parties being present or regularly notified to be present.

ARTICLE 54.—The arbitral judgment, duly pronounced and notified to the attorneys of the parties to the litigation shall decide the controversy finally and without appeal.

ARTICLE 55.—The parties may, however, reserve in their submission the right to ask for a revision of this arbitral judgment.

In this case and in the absence of an agreement to the contrary, demand must be addressed to the tribunal that rendered the judgment. It can only be based upon newly discovered evidence which is of a character to exercise a decisive influence upon the judgment, and which at the time the hearing was

closed was unknown to the tribunal itself and to the party which asks for a revision of the judgment.

The revision can only be granted by a decision of the tribunal distinctly stating the existence of newly discovered evidence of the character specified in the preceding paragraph, and declaring that the prayer for revision is for this reason granted.

The submission shall determine the time within which a prayer for a revision of the judgment shall be entered.

ARTICLE 56.—The arbitral judgment is obligatory only upon the parties who took part in the submission. When it consists in the interpretation of a Convention in which other Powers than those to the litigation have taken part, these shall notify the other parties of the submission upon which they have agreed.

Each of these other Powers has the right to take part in the proceedings before the tribunal. If one or more of them shall avail themselves of this right, the interpretation embodied in the judgment shall be equally binding upon them.

ARTICLE 57.—Each party to the controversy shall bear its own expense and an equal part of the expense of the tribunal.

ARTICLE 58.—The present Convention shall be ratified with as little delay as possible. The ratification shall be filed at The Hague. When the ratification is filed, a statement of it shall be drawn up, a certified copy of which shall be sent through their diplomatic representatives to all the Powers who have been represented at the Peace Conference at The Hague.

ARTICLE 59.—The non-signatory Powers who have been represented at the International Peace Conference may give in their adhesion to the present Convention. For this purpose they must cause their adhesion to be notified to the contracting parties by means of a written notification addressed to the Government of the Netherlands, and communicated by it to all the other contracting Powers.

ARTICLE 60.—The conditions upon which the Powers who have not been represented at the Peace Conference may give in their adhesion to the present Convention may form the subject of a further understanding between the contracting Powers.

ARTICLE 61.—If any one of the high contracting parties should desire to withdraw from this present Convention this withdrawal shall not take effect until a year after written notice given to the Government of the Netherlands, and communicated immediately by it to all the other contracting Powers. This withdrawal shall have no effect except with respect to the Power which shall have given notice of it.

REPORT  
OF THE  
COMMITTEE ON OBITUARIES.

The Committee on Obituaries announces the names of members who have died since the last meeting as follows, viz. :

ALABAMA.

\*TOMPKINS, HENRY C., . . . . . Montgomery.

COLORADO.

\*HOBSON, HENRY W., . . . . . Denver.

DELAWARE.

\*BAYARD, THOMAS F., . . . . . Wilmington.

DISTRICT OF COLUMBIA.

BRITTON, ALEXANDER T., . . . . . Washington.  
FENDALL, REGINALD, . . . . . Washington.  
GARLAND, AUGUSTUS H., . . . . . Washington.

GEORGIA.

HAMMOND, N. J., . . . . . Atlanta.

ILLINOIS.

WILE, DAVID J., . . . . . Chicago.

INDIANA.

FINCH, JOHN A., . . . . . Indianapolis.  
STUART, CHARLES B., . . . . . Lafayette.  
VANDEVANTER, ISAAC, . . . . . Marion.

LOUISIANA.

SEMMES, THOMAS J., . . . . . New Orleans.

MICHIGAN.

\*COOLEY, THOMAS M., . . . . . Ann Arbor.  
FLETCHER, NIRAM A., . . . . . Grand Rapids.

## NEBRASKA.

OFFUTT, CHARLES, . . . . . Omaha.

## NEW HAMPSHIRE.

SMITH ISAAC W., . . . . . Manchester.

## NEW YORK.

CUMING, JAMES R., . . . . . New York.

## OHIO.

POMERENE, J. C., . . . . . Coshocton.

## PENNSYLVANIA.

KAUFFMAN, A. J., . . . . . Columbia.

\*PARSONS, HENRY C., . . . . . Williamsport.

## RHODE ISLAND.

BRADLEY, CHARLES, . . . . . Providence.

## VERMONT.

\*SHURTLEFF, STEPHEN C., . . . . . Montpelier.

## WISCONSIN.

JENKINS, W. W., . . . . . Chippewa Falls.

\*MILLER, BENJAMIN K., . . . . . Milwaukee.

JOHN HINKLEY,  
*Chairman.*

Buffalo, August 28th, 1899.

NOTE.—This report includes those members of whose death the committee had been informed up to August 28th, 1899. Obituary notices (including some members not in the above report) will be found near the end of this volume.

\*Obituary notice published in the 1898 Report.

REPORT  
OF THE  
COMMITTEE ON LAW REPORTING AND DIGESTING.

This committee made a long report last year and no new members have been added to the committee. We have thought it best therefore to attempt nothing more than to present information as what digests of decisions have been published during the past year, and to offer a few suggestions on the subject referred to us.

A new digest of English case law has been published since our last meeting. It is many years since the courts of law and equity were brought together in the one High Court, but now for the first time we have one comprehensive digest of all the cases in Law and Equity from an early period to the present time under one alphabet. The Law Reports Digest covered cases of every kind from the beginning of that series, but the present Digest covers the ground included in Fisher's Harrison, as well as Chitty's Index of Equity cases, and all the other digests of English cases, and the whole work is contained in sixteen compact volumes. The facts of the cases are stated, as well as the rules of law laid down by the court, and the digest can be depended on for a statement of the precise point decided in each case.

In Scotland, we have the Scottish Law Digest, 1899.

The publication of the English Revised Reports was begun a good deal more than a year ago. The thirty-eighth and thirty-ninth volumes were published during the year covering the period from 1832 to 1835 inclusive. While the plan of the work is to include only such cases as are of present practical utility, the editors have done well in not omitting such well known cases as *Baily vs. Kippell*, *Moss vs. Lord Nugent* and *Williams vs. Carwardine*. Cases that have been overruled,

and cases that have become merged as it were in later decisions, are both important to the student of law.

The series of the Scots Revised Reports was begun in 1898, and six volumes have now appeared. They contain cases in the House of Lords. The first volume extends from 1707 to 1797, and the other five from 1797 to 1837. Both of these sets are beautifully printed on unglazed paper.

The tenth volume of the Century Digest of American cases, has appeared during the current year, and there are two series of annual digests, one, the American Digest on the same plan as the Century, and the other the United States Digest published by the Lawyers Coöperative Publishing Company.

Digests of State Reports are prepared at irregular intervals, and in some of the states there have been no new digests for more than ten years.

The following are those that have appeared since our last meeting:

Florida: Choate's Digest, two Volumes, printed in St. Louis, July, 1898.

Iowa: McLain's Digest, Vol. 3, 1887-1898.

Mississippi: Braine & Alexander, Vols. 45-73 of the reports; Nashville, 1899.

Missouri: Patterson's Complete Digest, Vol. 3, St. Louis, 1899.

Minnesota: Minnesota Digest, Vol. 3, 1898.

New York: Gibbon, 1899, Albany, 1898; Abbott's Annual, 1899; Haviland & Green's Table of Cases from 1893-1898. 1898.

Ohio: Ohio Index Digest, J. M. Welsh, Cincinnati, 1899.

Pennsylvania: Goode's Reference Index of Penna., 1898.

Virginia: Hurst & Brown, Volumes 1-3, down to and including the title Grand Jury.

There are also certain digests of special subjects.

Rapalje & Mack's Digest of Railway Decisions, Vol. 8, with the final index and tables of cases.

Brandenberg's Digest of Bankruptcy Decisions.

It would be tiresome to state in detail what additional volumes of reports have been issued during the year. The volume of the reports is increasing very rapidly and we wish to say again what we said last year, that courts and bar of this country are over-burdened with books of reports and that something must be done to decrease the length and number of reported cases. We insist again that it would be a relief to the profession if judges would refrain from writing long discussions of questions of law that are well settled and from making long quotations from former opinions and numerous citations in support of conclusions on which there is no difference of opinion, and that Judges and reporters should agree in excluding from the reports long opinions on mere questions of fact and from reporting in full opinions which declare principles of law that are already fully established.

We beg leave to refer on this subject to the discussion contained in our report in 1898, and to repeat the recommendation we made in that report.

We may add a few suggestions on minor points.

An important improvement in reporting is suggested by a recent rule of the Court of Errors of New Jersey, which provides that cases on appeal shall retain the title of the case below without reversing the order of the names, and that the name of the plaintiff below should be the first in order, and also that cases in which the state is a merely nominal party as in *certiorari* or *quo warranto* should be omitted from the title of the cause.

Another suggestion we have to make is that a uniform system should be adopted in citing the names of cases, so that in any index or digest, or table of cases cited, the case may be easily found by its name. The development of a legal principle is often best traced by the citations of a case in subsequent opinions, and the name of the case ought to be so definite that it can always be found with certainty in an alphabetical table. The name of a railroad company, or of a city, ought to be cited not as Railroad or as City of so and so, but



by the name of the company or city, as for instance, Pennsylvania R. R. Co. *vs.* Jones, or Pittsburg *vs.* Smith. As it is now, these cases might be found in one digest under these names, and in others as Railroad Co. *vs.* Jones and City of Pittsburg *vs.* Smith, and one must look under two letters instead of one in order to be sure of finding them.

This is only an illustration of the importance of definite and uniform rules in the mode of reporting and indexing cases in all the jurisdictions of our own country. We dwelt upon this also in our report of last year, and beg leave to refer to what we said then upon that subject, and we only make now the further suggestion that the reporters themselves shall endeavor to agree upon a uniform plan, and that for that purpose they form an association and hold meetings at certain intervals at which they shall receive suggestions from one another and prepare definite rules to be followed by all in their various series of reports.

EDWARD Q. KEASBEY,  
ADOLPH MOSES,  
*Committee.*

**REPORT**  
**OF THE**  
**COMMITTEE ON UNIFORM STATE LAWS.**

No general report was made by your committee on Uniform State Laws last year, as the paper read by the Chairman of the committee took its place.

During the past year the progress made towards promoting uniformity has been encouraging. Eight states have passed the Negotiable Instruments Act recommended by the Conference of Commissioners. It has also been passed by both branches of Congress and signed by the President, for the District of Columbia. In California it passed both houses but the Governor failed to sign it. In several of the states it was favorably reported by the judiciary committees and passed one branch of the legislature, but was deferred in order to insure more deliberate consideration of so long and important a bill. Having passed seven other states, previously, it is now the law of fifteen states and the District of Columbia.

The following list shows the states in which the act has been enacted up to the present time, with date when the law became effective in each state :

Connecticut.....	April	5, 1897.
Colorado.....	July	19, 1897.
Florida.....	August	3, 1897.
New York.....	October	1, 1897.
Maryland.....	June	1, 1898.
Virginia.....	July	1, 1898.
Massachusetts.....	January	1, 1899.
North Carolina.....	March	8, 1899.
District of Columbia.....	April	3, 1899.
Wisconsin.....	May	15, 1899.
Tennessee.....	May	15, 1899.

Oregon.....	May	19, 1899.
Washington.....	June	7, 1899.
Utah.....	July	1, 1899.
North Dakota.....	July	1, 1899.
Rhode Island.....	July	1, 1899.

This is the most elaborate measure yet recommended by the Conference and its acceptance so far by the legislatures seems to assure its general adoption and to encourage further efforts towards attaining uniformity in the special matters referred to the consideration of the Conference.

Your Committee again desires to emphasize the necessity of having commissioners appointed from those states that are not now represented in the Conference, and the great desirability of having provision made for their compensation. Up to the present time none of the states have salaried commissions, some not even allowing remuneration for reasonable expenses. There are now thirty-two state commissions and ninety-seven commissioners.

We advise that the American Bar Association again affirm its approval and co-operation in the attempt at uniformity in the form of a resolution instructing the local councils to labor to secure the appointment of new commissioners, and in addition to induce the different state associations to consider the measures adopted by the Conference and if meeting with approval, to co-operate in securing their passage by the legislatures.

As the committee consists of one member from each state it is impossible for it to meet until the evening of the meeting of the association, and it is impossible to have the acts and recommendation printed in accordance with by-law number 12, but as it has been customary to waive its provision on account of the exceptional size of the committee, hitherto, we crave the privilege to have the recommendation acted upon at this time. The recommendation proposed is as follows :

*Resolved*, That the Vice-Presidents and Local Councils in the several states which have not already appointed Commis-

sioners on Uniform State Laws, be instructed to continue their efforts for the creation of commissions in such states, until every state is represented, and to induce, if possible, all the state and local bar associations to consider the measure recommended by the Conference of Commissioners on Uniform State Laws, and, if meeting with their sanction, to co-operate actively in securing the passage of such measures by the legislature.

LYMAN D. BREWSTER,  
*Chairman.*

**REPORT**  
**OF THE**  
**COMMITTEE ON PAROLE AND INDETERMINATE**  
**SENTENCES.**

The Committee on Parole and Indeterminate Sentences respectfully report that the subject is still under consideration.

The Chairman is making inquiries in Europe as to prison methods, the parole system and discipline in prisons, under a commission which has been given him as Special Commissioner for that purpose by the Department of Justice of the United States.

With a view to a report at the meeting next year of the result of the investigations of the Chairman, of a somewhat broader scope than the report of last year, at his request, the undersigned recommend that the committee be continued under the name of the committee on Penal Laws and Prison Discipline, and they present herewith a resolution to that effect.

JOHN H. STINESS,  
ROBERT W. WILLIAMS.  
*For the Committee.*

Buffalo, August 29, 1899.

**REPORT**  
**OF THE**  
**COMMITTEE ON FEDERAL COURTS.**

In pursuance of the resolution of this Association, your committee prepared a bill to carry into effect the recommendations of the report as to changes in the Federal courts, adopted by the Association, at its last annual meeting. This bill was presented in the Senate by Senator Hoar on the 27th day of February last, but owing to the urgency of legislation arising from the Spanish war, no consideration of the bill by Congress or by the judiciary Committee was possible during the last session.

At this time there was in existence, under an Act passed by a previous session of Congress, a Commission, consisting of Messrs. Alexander C. Botkin, David K. Watson and David B. Culberson, which had been appointed to revise and codify the criminal and penal laws of the United States. By an Act approved March 3, 1899, the duty of these Commissioners was extended, and they were directed to revise and codify the laws concerning the jurisdiction and practice of Courts of the United States, including the Judiciary Act, and all Acts providing for the removal, appeal and transfer of causes.

The subject matter embraced by these additional powers includes the whole ground, covering the changes recommended by this Association.

The Commissioners under this Act have published a first draft of their revision, and it is a gratifying fact that they have adopted nearly, but not quite all, the changes recommended by this Association.

Under these circumstances, and with a view of carrying out these recommendations, in the most efficient way, your committee recommends that it be continued with power to co-operate

with the Commissioners charged with the duty of revising and codifying the statutes and, as far as possible, to obtain the incorporation in the new law of all the provisions which have obtained the sanction of this Association.

EDMUND WETMORE,  
*Chairman.*

**REPORT**  
**OF THE**  
**COMMITTEE ON TRADE-MARKS.**

*To the American Bar Association :*

Your committee respectfully beg leave to report as follows :

Your committee has carefully considered the constitutional power of Congress to regulate commerce with foreign nations, between the states and with the Indian tribes, and they have no doubt that the power to regulate commerce with foreign nations, and between the states, vested by the constitution in Congress, is amply comprehensive enough to include the power to regulate the use of marks of origin in foreign and interstate commerce, and to provide any reasonable form of punishment, criminal as well as civil, for the violation of such regulations, and to give the United States courts jurisdiction of all cases of violation of such regulations.

Your committee has also carefully considered the existing statutes of the United States, and the statutes of the several states, as well as other nations; and they have drawn a bill with the purpose of conforming as nearly as possible to the existing laws, while at the same time providing such additional provision as they think necessary to meet the conditions of registration and enforcement of the regulations which Congress may prescribe.

The bill is divided into three divisions :

First—It provides for the registration of trade-marks used in foreign and interstate commerce and with the Indian tribes, and requires the publication of applications for the registration of trade-marks, in order that the owners of existing marks may be advised of the intention of another to register the same mark.



The provision has been thought necessary in consequence of the fact that there are several hundred thousand valid trade-marks in use in the United States, and less than 40,000 of them registered. It is due to the owners of valid and valuable trade-marks, that they should be advised of the fact that another, whether an innocent user or an infringer, is attempting to register their trade-mark, and that they should have the opportunity of protesting.

Second—The United States circuit courts are given exclusive jurisdiction of all cases of infringement of a registered trade-mark, arising in interstate or foreign commerce or commerce with the Indian tribes, and civil remedies are provided, which consist of the right to an injunction and profits and damages. The act expressly reserves to trade-mark owners all existing rights at common law in trade-marks, which are now in use or which may hereafter be acquired.

These provisions are substantially identical with the present act, except that they add "interstate commerce."

Third—The act provides criminal remedies "by a fine of not more than \$500, or imprisonment at hard labor, for not more than one year, or by both in the discretion of the court," for the wilful forgery and use of a registered trade-mark in interstate commerce.

The reason for this provision lies in the fact that it is to-day universally established by the general consensus of legal opinion, that the wilful forgery of a trade-signature used for the purpose of passing spurious goods upon an innocent public as and for genuine goods, is a crime.

Every nation in the world which has a trade-mark law, except the United States, and there is hardly one that has not, treats this act as a crime and punishes it criminally. So great has been the demand for a criminal remedy for this act in the United States, that thirty-six states have passed thirty-six criminal statutes, declaring this act to be a crime and punishing it as such.

Your committee have been impressed with the fact that the great variety of procedure, and the necessity prescribed by the state statutes in twenty-four cases for local registration, and in some states for registration in every county of the state, makes the resort of these state statutes practically impossible for a trade-mark owner who has trade throughout the whole of the United States, and points as strongly as anything could to the necessity for a national law permitting registration in the United States Patent Office of all lawful trade-marks used in interstate and foreign commerce, and giving jurisdiction to the United States courts throughout the whole country of cases of infringement arising in interstate and foreign commerce.

The proposed bill is appended, and at the next meeting of the Association at Buffalo, August, 1899, the Association will be asked to endorse this measure.

Respectfully submitted,

ARTHUR STEUART,  
*Chairman.*  
EDMUND WETMORE,  
JAMES H. HOYT,  
FRANK F. REED.

I dissent from both the reasoning and the conclusions of the above report.

JAMES H. RAYMOND.

## A BILL\*

To authorize the registration of trade-marks and to protect the same.

1     *Be it enacted by the Senate and House of Representa-*  
2     *tives of the United States of America in Congress*  
3     *assembled,* That the owners of trade-marks used in com-  
4     merce with foreign nations or among the several States or  
5     with the Indian tribes may obtain registration of such  
6     trade-marks by complying with the following requirements,  
7     to wit:

8     First. By paying into the Treasury of the United  
9     States the sum of twenty-five dollars as a fee for such  
10    registration.

11    Second. By filing in the Patent Office a written appli-  
12    cation for such registry, which shall specify the name,  
13    domicile, location, and citizenship of the owner or owners  
14    of such trade-mark, or, if a corporation, its place of busi-  
15    ness, and under the laws of what State or nation incor-  
16    porated, the description of the goods or articles to which  
17    the particular trade-mark has been appropriated, a  
18    description of the trade-mark itself, with a facsimile  
19    thereof and the mode in which the same is used or applied  
20    or affixed to such goods, and the length of time it has been  
21    used. Such application shall be signed by the owner of  
22    such alleged trade-mark, or if a corporation, by an officer  
23    thereof, or for him, them, or it, and in his, their, or its  
24    name by his, their or its agent or attorney, and in the  
25    latter case shall be verified by such agent or attorney to  
26    the effect that he has been duly authorized by the owner  
27    or owners of such alleged trade-mark to make such appli-  
28    cation for the registry thereof; and immediately upon the  
29    filing of an application for the registration of a trade-mark

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\* This Bill is a copy of Bill S. 4794, 55th Congress, 2d Session, introduced June 20, 1898, by Mr. Platt, of Connecticut, referred to Committee on Patents, and ordered to be printed. A similar Bill (H. R. 3128, 55th Congress, 1st Session,) was introduced in the House of Representatives, May 6, 1897, by Mr. Hicks, referred to the Committee on Patents, and ordered to be printed.

1 under the provisions of this Act, the Commissioner of  
2 Patents shall cause a notice of said application, giving the  
3 name of the applicant, the date of his application, a  
4 description and facsimile of the trade-mark sought to be  
5 registered, to be published in the Official Gazette of the  
6 United States Patent Office for four successive weeks.  
7 The payment of said fee and the filing of said application  
8 as aforesaid shall, after publication thereof and during the  
9 pendency of such application, be conclusive notice to all  
10 persons of the alleged owner's claim to ownership and to  
11 the right of registration of such trade-mark as set forth in  
12 said application.

13 Third. Within six months after the filing of such  
14 application the owner or owners of such alleged trade-  
15 mark shall file in the Patent Office a written declaration,  
16 verified by such owner or owners, or one of them, or by a  
17 member of the firm, or by an officer of the corporation  
18 claiming to own the same, to the effect that such alleged  
19 owner is the owner, and had at the time of the filing of  
20 said application, and still has, the right to the use of the  
21 trade-mark sought to be registered; that no other person,  
22 firm, or corporation has the right to such use, either in  
23 the identical form or in any such near resemblance thereto  
24 as might be calculated to deceive; that the same is used by  
25 the alleged owner thereof in commerce with foreign  
26 nations or among the several States or with Indian tribes,  
27 and that the description and facsimile contained in the  
28 declaration filed with said application truly represent the  
29 trade-mark sought to be registered.

30 Fourth. By complying with such general rules and  
31 regulations relative to the method of procedure in such  
32 cases as the Commissioner of Patents may be, and is  
33 hereby, authorized to prescribe: *Provided, however,* That  
34 no trade-mark shall be entitled to registration under the  
35 provisions of this Act unless the same shall be a lawful  
36 trade-mark, and shall be lawfully used as a trade-mark by

1 the owner thereof in commerce with foreign nations or  
2 among the several States or with Indian tribes, or is  
3 within the provisions of a treaty, convention, agreement,  
4 or declaration with a foreign power, nor unless the alleged  
5 owner or owners thereof shall be domiciled within the  
6 United States or located in a foreign country or tribe  
7 which by treaty, convention, or law affords similar privi-  
8 leges to citizens of the United States; nor shall any  
9 such trade-mark be entitled to registration which consists  
10 of or simulates the arms, seal, or other insignia of the  
11 United States, or of any State or municipality, or of any  
12 foreign nation.

13 SEC. 2. That upon the filing of the declaration afore-  
14 said it shall be the duty of the Commissioner of Patents to  
15 require the examiner of trade-marks to make an examina-  
16 tion of such alleged trade-mark; and if upon such exami-  
17 nation it shall appear that the same is entitled to registra-  
18 tion under the provisions of this Act, said Commissioner  
19 shall issue to the owner thereof a certificate of registration  
20 as hereinafter provided.

21 SEC. 3. That if upon examination it shall appear that  
22 the alleged trade-mark, for any reason whatever, does not  
23 constitute a proper trade-mark, or that the alleged owner  
24 or owners thereof do not in fact own the same, or are not  
25 entitled to the exclusive use thereof, or that the same is  
26 identical with or so nearly resembles a known or registered  
27 trade-mark as to cause confusion or mistake in the minds  
28 of purchasers, or to deceive the public, registration of such  
29 trade-mark shall be refused, and such refusal shall be  
30 accompanied by the reasons therefor. If within six  
31 months from the date of such refusal the said applicant or  
32 alleged owner shall file with the said Commissioner a  
33 written request for a reconsideration of his said application,  
34 giving his reasons therefor, or amending said application  
35 or declaration, it shall be the duty of the Commissioner to  
36 require the examiner of trade-marks to re-examine the

1 same, and if upon such re-examination registration be  
2 again refused, the reasons therefor shall be stated. When  
3 registration has been twice refused by the examiner of  
4 trade-marks upon substantially the same state of facts, the  
5 applicant may, within six months from such second  
6 refusal, appeal to the Commissioner of Patents in person ;  
7 but if the applicant so amends his application or declara-  
8 tion as to overcome the reasons given for such refusal the  
9 Commissioner shall order the same to be registered and  
10 issue his certificate thereof as in this Act provided. All  
11 amendments must conform to and in no case alter the  
12 facsimile deposited with the original application.

13 SEC. 4. That upon failure of the applicant to complete  
14 his application within six months from the filing of any  
15 part thereof, or upon his failure to prosecute his applica-  
16 tion within six months after any office action therein, of  
17 which notice shall have been given to the applicant, or if  
18 no appeal be taken from the second refusal of the exam-  
19 iner of trade-marks to register the mark within the time  
20 aforesaid provided for taking the same, or if the declara-  
21 tion aforesaid be not filed within the time for that pur-  
22 pose in this Act provided, or if the person making such  
23 application or the person or persons for whom he so made  
24 the same shall at any time in writing notify the Commis-  
25 sioner of Patents that he desires to abandon the same,  
26 the said application for registration shall be deemed to  
27 be fully abandoned ; and if such case be abandoned within  
28 two years from the completion of the application, there  
29 shall be refunded to the applicant, out of the Treasury of  
30 the United States, three-fifths of the fee by him paid for  
31 such registration: *Provided, however,* That the said  
32 Commissioner may extend the time for the filing of such  
33 declaration or request for reconsideration or appeal for a  
34 further period, not exceeding six months, upon its being  
35 shown to his satisfaction that such delay was unavoidable ;  
36 but in case of any such extension, or in case the applicant

1 appeals to the Commissioner from the decision of the  
2 examiner of trade-marks upon any matter whatever, no  
3 part of the fee paid by the applicant shall be refunded.

4 SEC. 5. That in an application for such registration the  
5 Commissioner of Patents shall decide the presumptive law-  
6 fulness of claim to the alleged trade-mark, and in any  
7 dispute between an applicant and previous registrant, or  
8 between applicants involving priority of adoption or right,  
9 he shall follow, so far as the same may be applicable, the  
10 practice of courts of equity of the United States in  
11 analogous cases.

12 SEC. 6. That every applicant for the registration of a  
13 trade-mark under the provisions of this Act, dissatisfied  
14 with the decision of the Commissioner of Patents, may  
15 appeal to the court of appeals of the District of Columbia;  
16 and such appeal shall be taken, heard, and determined in  
17 form, manner, and effect as is by law provided in case of  
18 patents.

19 SEC. 7. That certificates of registry of trade-marks  
20 shall be issued in the name of the United States under  
21 the seal of the Patent Office and signed by the Commis-  
22 sioner of Patents, and dated and numbered, and a record  
23 thereof made, and printed copies of the application and  
24 declaration kept in the Patent Office. Certified copies of  
25 trade-marks, and of applications, declarations, and other  
26 papers filed therewith, and certificates of registry so  
27 signed and sealed, shall be competent evidence as to the  
28 matters therein contained in any suit in which such trade-  
29 mark shall be brought in controversy.

30 SEC. 8. That such certificate of registry shall remain  
31 in force for thirty years from its date, and may be from  
32 time to time renewed for like periods upon the same  
33 terms as herein provided, application for such renewal  
34 being made during the six months prior to the expiration  
35 of such certificate.

36 SEC. 9. That the registration of a trade-mark under

1 the provisions of this Act shall be prima facie evidence  
2 of ownership. Any person who shall, without the con-  
3 sent of the owner thereof, reproduce, counterfeit, copy,  
4 or colorably imitate any such trade-mark and affix the  
5 same to merchandise of substantially the same descriptive  
6 properties as those described in the registration, or to  
7 labels, signs, packages, wrappers, or receptacles intended  
8 to be used upon or in connection with the sale of mer-  
9 chandise of substantially the same descriptive properties  
10 as those described in such registration, and shall use the  
11 same in commerce with a foreign nation, or among the  
12 several States, or with the Indian tribes, shall be liable  
13 to an action at law for damages therefor, at the suit of  
14 the owner thereof; and the party aggrieved shall also  
15 have his remedy according to the course of equity to  
16 enjoin the wrongful use of such trade-mark in foreign  
17 commerce, or among the several States, or with the Indian  
18 tribes, in any court having jurisdiction over the person  
19 guilty of such wrongful act; and the courts of the United  
20 States shall have original and appellate jurisdiction in  
21 such cases without regard to the amount in controversy;  
22 and, upon a decree being rendered in any such case for an  
23 infringement, the complainant shall be entitled to recover,  
24 in addition to the profits to be accounted for by the  
25 defendant, the damages the complainant has sustained  
26 thereby, and the court shall assess the same or cause the  
27 same to be assessed under its direction.

28 SEC. 10. That no action or suit shall be maintained  
29 under the provisions of this Act in any case where the  
30 trade-mark is used in any unlawful business or upon any  
31 article injurious in itself, or which trade-mark has been  
32 used with the design of deceiving the public in the pur-  
33 chase of merchandise, or under any certificate of registry  
34 fraudulently obtained.

35 SEC. 11. That any person who shall procure the registry  
36 of a trade-mark, or of himself as the owner thereof, or any



1 entry respecting the same, in the office of the Commis-  
2 sioner of Patents, by a false or fraudulent representation  
3 or declaration, orally or in writing, or by any fraudulent  
4 means, shall be liable to pay any damages sustained in  
5 consequence thereof to the injured party, to be recovered  
6 in an action at law.

7 SEC. 12. That nothing in this Act shall prevent, lessen,  
8 impeach, or avoid any common-law rights or any remedy  
9 at law or equity which any party aggrieved by the wrong-  
10 ful use of any trade-mark might have had if the provisions  
11 of this Act had not been passed.

12 SEC. 13 That nothing in this Act shall be so construed  
13 as to unfavorably affect a trade-mark after the term of  
14 registration shall have expired ; nor to give cognizance to  
15 any court of the United States in an action or suit between  
16 citizens of the same State.

17 SEC. 14. That marks adopted or used by incorporated  
18 associations of manufacturers, labor unions, or other  
19 organizations to designate their products may be regis-  
20 tered under the provisions of this Act on compliance with  
21 the conditions herein prescribed, and for the purpose of  
22 this Act shall be held and deemed to be trade-marks.

23 SEC. 15. That every registered trade-mark, or any  
24 interest therein, shall be assignable, together with good  
25 will and business, by an instrument in writing ; an assign-  
26 ment of a registered trade-mark shall be void as against  
27 any subsequent purchaser or mortgagee for a valuable  
28 consideration without notice, unless within thirty days  
29 after its execution it is recorded in the Patent Office in  
30 books to be therein kept for that purpose. For the record-  
31 ing thereof there shall be paid to the Commissioner a fee  
32 of one dollar for every three hundred words, two dollars  
33 for every three hundred to one thousand words, and three  
34 dollars for every one thousand words, or more, to be by  
35 him received and accounted for as are other fees paid into  
36 the Patent Office.

1        SEC. 16. That whenever in any action any court shall  
2 issue an injunction to prevent the transfer or assignment  
3 of any such registered trade-mark, a certified copy thereof,  
4 attested by the clerk of said court and under the seal  
5 thereof, containing the names and residences of the parties  
6 to said action, the court in which the same is pending, the  
7 number and date of the certificate of registration referred  
8 to, with the date thereof, and filed and duly recorded in  
9 the Patent Office, shall be sufficient notice of the pendency  
10 of said injunction; and whenever said injunction shall be  
11 dissolved or modified a similar certificate thereof filed and  
12 duly recorded in the Patent Office shall be sufficient notice  
13 of such dissolution or modification.

14        SEC. 17. That a court of equitable jurisdiction may  
15 pass the title to registered trade-marks by decree without  
16 any act on the part of the defendant, whenever, in its  
17 opinion, that shall be the proper mode to carry into effect  
18 a judgment or order of the court, and a copy of such  
19 decree, duly certified by the clerk of said court and under  
20 the seal thereof, may be filed and recorded in the Patent  
21 Office, and such decree, while in force, shall be as effec-  
22 tual to transfer such trade-mark or any interest therein as  
23 an assignment to the same effect executed by such defend-  
24 ant. For the recording thereof there shall be paid to the  
25 Commissioner a fee of one dollar for every three hundred  
26 words, two dollars for every three hundred to one thou-  
27 sand words, and three dollars for every one thousand  
28 words or more, to be received and accounted for by him  
29 as are other fees paid into the Patent Office.

30        SEC. 18. That no articles of imported merchandise  
31 bearing marks which copy or simulate the name or trade-  
32 mark of any domestic manufacture or manufacturer, or of  
33 any other person who shall have duly registered his trade-  
34 mark pursuant to the laws of the United States, shall be  
35 admitted to entry at any custom-house of the United  
36 States. And in order to aid the officers of the customs

1 in enforcing this prohibition, any person entitled to the  
2 benefit of this section may require his name and place of  
3 business and a description of his trade-mark and the  
4 merchandise upon which said trade-mark is used to be  
5 recorded in books which shall be kept for that purpose in  
6 the Treasury Department, under such regulations as the  
7 Secretary of the Treasury may prescribe, and may fur-  
8 nish to the Department facsimiles of such trade-marks,  
9 and thereupon the Secretary of the Treasury shall cause  
10 one or more copies of the same to be transmitted to each  
11 collector or other proper officer of the customs.

12 SEC. 19. That nothing in this act contained shall be so  
13 construed as in any manner to affect the validity of the  
14 registration of any trade-mark duly registered according  
15 to the laws of the United States, existing prior to or at  
16 the time of the passage of this Act, or in any manner to  
17 injuriously affect the rights and interest of parties in such  
18 trade-mark.

19 SEC. 20. That all applications made and not fully  
20 determined at the time of the passage of this Act for the  
21 registration of trade-marks under the laws of the United  
22 States then existing may be perfected and determined by  
23 virtue of and in accordance with such then existing laws,  
24 anything in this Act contained to the contrary notwith-  
25 standing; and any registration of any such trade-mark  
26 hereafter made under and by virtue of such law, shall be  
27 as valid and confer the same right and privileges upon the  
28 registrant thereof as though said laws were not hereby  
29 repealed.

30 SEC. 21. That the word "States" as used in this Act  
31 shall be held and construed to include and embrace the  
32 District of Columbia and the Territories of the United  
33 States.

34 SEC. 22. That any person who, with intent to defraud,  
35 falsely makes, forges, reproduces, copies, or counterfeits,  
36 or causes or procures to be made, forged, reproduced,

1 copied, or counterfeited, any trade-mark duly registered  
2 under the provisions of this Act, knowing the same to be  
3 a fraudulent imitation or counterfeit of such trade-mark,  
4 and who uses or causes the same to be used in commerce  
5 with foreign nations or among the several States or with  
6 the Indian tribes, or who affixes the same or causes the  
7 same to be affixed to merchandise of substantially the  
8 same descriptive properties as those referred to in said  
9 registration of such trade-mark, and who uses the same  
10 in commerce with foreign nations or among the several  
11 States or with the Indian tribes, or who otherwise passes  
12 upon the public or utters in commerce with foreign  
13 nations or among the several States or with the Indian  
14 tribes any false, reproduced, copied, counterfeited, or  
15 colorable imitation of such registered trade-mark, know-  
16 ing the same to be falsely made, forged, reproduced,  
17 copied, counterfeited, or such colorable imitation, shall,  
18 upon conviction thereof, be punished by a fine of not  
19 more than five hundred dollars or by imprisonment at  
20 hard labor for not more than one year, or by both such  
21 fine and imprisonment, in the discretion of the court.

22 SEC. 23. That every person who, with intent to  
23 defraud, shall deal in or sell, or cause or procure the sale  
24 of in commerce with foreign nations or among the several  
25 States or with the Indian tribes, any merchandise or  
26 article of substantially the same descriptive properties as  
27 those referred to in the registration of any trade-mark  
28 duly made under the provisions of this Act, to which or  
29 to the package in which the same are put up, is fraudu-  
30 lently affixed such trade-mark, or any colorable imitation  
31 thereof calculated to deceive the public, knowing the  
32 same to be counterfeit or not the genuine merchandise or  
33 article referred to in such registration, shall, on convic-  
34 tion thereof, be punished as prescribed in section twenty-  
35 two of this Act.

36 SEC. 24. That every person who, with intent to

1 defraud, uses or affixes, or causes or procures to be fraudu-  
2 lently used or affixed, any trade-mark duly registered  
3 under the provisions of this Act, or any colorable imita-  
4 tion thereof calculated to deceive the public, in, with, or  
5 to any merchandise or article of substantially the same  
6 descriptive properties as those referred to in such regis-  
7 tration, or to the package or inclosure in which the same  
8 is put up, knowing the same to be counterfeit or not the  
9 genuine merchandise or article referred to in such regis-  
10 tration, and who sells or uses the same or causes the same  
11 to be sold or used in commerce with foreign nations or  
12 among the several States or with the Indian tribes, shall,  
13 on conviction thereof, be punished as prescribed in  
14 section twenty-two of this Act.

15 SEC. 25. That every person who, with intent to defraud,  
16 fills, or procures to be fraudulently filled, any package to  
17 which is affixed any trade-mark duly registered under the  
18 provisions of this Act, or any colorable imitation thereof  
19 calculated to deceive the public, with any merchandise or  
20 article of substantially the same descriptive properties as  
21 those referred to in such registration, knowing the same  
22 to be counterfeit or not the genuine merchandise or article  
23 referred to in such registration, and sells or uses or offers  
24 for sale or use such counterfeit merchandise in commerce  
25 with foreign nations or among the several States or with  
26 Indian tribes, shall, on conviction thereof, be punished as  
27 prescribed in section twenty-two of this Act.

28 SEC. 26. That any person who, with intent to injure or  
29 defraud the owner of any trade-mark duly registered under  
30 the provisions of this Act, or any other person lawfully  
31 entitled to use or protect the same, shall, in commerce  
32 with a foreign nation or among the several States or with  
33 the Indian tribes, buy, sell, offer for sale, or deal in any  
34 used or empty box, envelope, wrapper, bottle, cask, case,  
35 or other package to which is affixed, so that the same may  
36 be obliterated without substantial injury to such box or

1 other thing aforesaid, any such registered trade-mark not  
2 so destroyed, defaced, erased, or obliterated as to prevent  
3 its fraudulent use, shall, on conviction thereof, be punished  
4 as prescribed in section twenty-two of this Act.

5 SEC. 27. That any person who shall, with intent to  
6 defraud any person or persons, knowingly and wilfully aid  
7 in or abet the commission of any of the offenses described  
8 in sections twenty-two, twenty-three, twenty-four, twenty-  
9 five, and twenty-six of this Act shall, upon conviction  
10 thereof, be punished by a fine not exceeding two hundred  
11 and fifty dollars or by imprisonment for not more than  
12 six months, or by both such fine and imprisonment, in the  
13 discretion of the court.

14 SEC. 28. That the Commissioner of Patents is hereby  
15 authorized to make and prescribe all such rules, regula-  
16 tions, and forms as he may deem necessary or expedient  
17 for carrying out the provisions of this Act.

18 SEC. 29. That an Act entitled "An Act to authorize  
19 the registration of trade-marks and protect the same,"  
20 approved March third, eighteen hundred and eighty-one,  
21 and also an Act entitled "An Act to punish the counter-  
22 feiting of trade-mark goods and the sale or dealing in of  
23 counterfeit trade-mark goods," approved August four-  
24 teenth, eighteen hundred and seventy-six, together with  
25 all other acts and parts of acts, so far as they are incon-  
26 sistent with the provisions of this Act, are hereby  
27 repealed. But such repeal shall not prevent the registra-  
28 tion under this Act of trade-marks which conform to the  
29 provisions of this Act previously registered according to  
30 the laws of the United States, nor the consideration and  
31 allowance of applications heretofore made for the regis-  
32 tration of trade-marks under any of the Acts hereby  
33 repealed which substantially conform to the requirements  
34 of this Act; and the fees paid at the time of the filing of  
35 such applications shall be taken to be payment in full of  
36 the fee for registration in this Act required.

**REPORT**  
**OF THE**  
**COMMITTEE ON THE INTERNATIONAL PROTECTION OF**  
**INDUSTRIAL PROPERTY.**

*To the American Bar Association :*

Your Committee appointed at the last meeting respectfully report that the Conference convened at Brussels in December, 1897, under the Convention for the Protection of Industrial Property, concluded at Paris, March 20, 1883, has not yet concluded its labors. It has still before it propositions for the amendment of the Convention relating

- To the duration of the period of delay of priority ;
- To the forfeiture of patents for non-working ;
- To the admission of trade-marks to registration ;
- To the usurpation of marks used but not registered ;
- To unfair competition (concurrence déloyale).

The Convention was drafted at a Conference called by the French Government at Paris in November, 1880, at which delegates attended from Austria-Hungary, Argentine Republic, Belgium, Brazil, France, Great Britain, Guatemala, Italy, Luxemburg, the Netherlands, Portugal, Russia, Sweden, Norway, Salvador, Switzerland, Turkey, United States of America, Uruguay and Venezuela.

That Conference embodied in the Convention the following general principles for the international recognition of rights of inventors to protection for their respective inventions, and of manufacturers or merchants to their marks and commercial names—viz. : (1) that the citizen and the alien should enjoy concurrent rights in each country ; (2) that the disclosure of an invention before application for a patent should not invalidate the patent ; (3) that the first registrant of a trade-mark

should have the prior right; (4) that the commercial name should be protected without registration; (5) that protection should be extended to inventions exhibited at international expositions, and to marks on goods so exhibited.

These principles were embodied in the simplest language and most general provisions. The concurrent rights of citizens were thus provided for:

“Art. 2. The subjects or citizens of the contracting states shall enjoy in all the other states of the Union so far as concerns patents for inventions, trade or commercial marks, and the commercial name, the advantages that the respective laws thereof at present accord, or shall afterwards accord to subjects or citizens. In consequence, they shall have the same protection as these latter, and the same legal recourse against all infringements of their rights, under reserve of complying with the formalities and conditions imposed upon subjects or citizens by the domestic legislation of each state.”

Disclosure of an invention before patenting, until then wholly unknown in Europe, was provided for by the ingenious device of making an application in one country only of the agreeing states equivalent to an application in each of the others, for the purpose of preventing a dedication to the public and a consequent loss of the right to a patent. The right of the inventor to claim the effect of the filing of the application in all the countries other than the first, was limited in time to six months for European countries and seven for others. This period of time was called a period of priority. During the period of priority neither the deposit of an application by another, nor the publication of the invention nor its working would invalidate the application or patent obtained under it.

This was a great step forward in providing protection to the inventor, since under the European system he was granted a patent as a reward for the disclosure of his invention; but this was, before the Convention, difficult to do, except in one country, since a public patent in one country would render a first disclosure of the invention by the inventor in any of the others impossible.



The first registrant of a trade-mark was also given a period of three months in European countries and four months elsewhere, during which he could apply in other countries of the Union and take precedence of others who might apply for the registration of the same mark. In most of the states of the Union such a provision was desirable, because the registration gives the right and not the common law.

Commercial names were relieved from the requirement of registration.

Industrial expositions were made close spheres, where the disclosure of an invention would not work a forfeiture of the right to apply for a patent, nor the use of a trade mark without registration give the right to another to usurp it.

An administrative office was established at Berne, and provision made for its maintenance.

The general principles of the Convention being thus provided for in an untried manner, provision was wisely made for amendment for the purpose of improvement as experience should direct. The first Conference for such purpose was held at Rome in 1886. No attempt was made at this Conference to alter the principles on which the Convention was based, but it was proposed to render the stipulation in regard to trade-marks more efficient by providing for their international registration through the International Bureau, at Berne. This proposition did not receive the approval of the Conference, but a proposition to modify Article 10 so as to make the prevention of false indications of origin of goods more certain, and some matters of minor importance, were approved and transmitted to the various states of the Union for their ratification. All the states did not ratify the proposed amendments, and they therefore failed.

At the next Conference, held at Madrid, in 1890, the same propositions for amendment were advanced as separate sub-conventions or agreements, in order to avoid the necessity of

unanimous ratification. The propositions seemed so intimately associated with the Convention that they should, if possible, be connected with it in some way. It was, therefore, provided that the sub-conventions or agreements should be submitted to all the states of the Union for ratification, and should become binding on such states as should ratify them.

The agreements related to (1) the suppression of false indications of origin; and (2) the international registration of trade-marks. They were both adhered to by a certain number of states, and have gone into effect.

Certain minor amendments, increasing the dotation of the International Bureau, etc., were adopted and ratified.

The last Conference began its first session December 1, 1897, and was attended by delegates from Austria, Hungary, Chili, Ecuador, Germany, Japan, Mexico and Turkey, which, for the most part had not sent delegates to the prior conferences. The whole number of countries represented were twenty-three, composed of the following countries, in addition to those above mentioned: Belgium, Brazil, Denmark, France, Great Britain, Italy, the Netherlands, Norway, Portugal, Spain, Servia, Sweden, Switzerland, Tunis and the United States.

The Conference agreed to amendments providing for the case of citizens of states not members of the Union, who desire to take advantage of the provisions of the convention; striking out "by a third party" in Article 4, so as to leave no doubt but that the inventor himself may use his invention in public and describe it without invalidating his patent; providing for the independence of patents taken out in different countries; modifying Article 9, so as to allow prohibition of importation of goods bearing an unlawful trade-mark or commercial name in place of seizure of goods in transit, and making this Article applicable to agricultural products in addition to manufactures; for the date when the adhesion of new members shall go into force; and that each state shall accord temporary protection, etc., to exhibits at international expositions instead of engage to, etc.

The most important amendment is that for the independence of patents, which reads as follows:

“ Art. 4 bis. Patents applied for in the different contracting states by persons admitted to the benefit of the Convention, under the terms of Article 2 and 3, shall be independent of the patents obtained for the same invention in the other states adhering or not to the Union.

“ This provision shall apply to patents existing at the time of its going into effect.

“ The same rule applies in the case of adhesion of new states as to patents already existing either in the Union or in the new adhering state at the time of the adhesion.”

The great questions referred to in the opening of our report, were, after debate, left undecided and open for discussion at a second session, which is to be held in the future.

These questions are of the greatest interest to the inventor, manufacturer and merchant.

Take the first,—the extension of time during which the inventor may apply for a patent.

We, in the United States, do not appreciate the actual position of the inventor elsewhere. Two years are here allowed in which application can be made for a patent after public use, but in Europe the universal rule is that, except where the Convention applies, the invention must be wholly secret prior to the application for the patent. It was to break down this rule that the Convention was framed. Whatever, therefore, will extend the time for application after publicity (now six or seven months) will more nearly approximate to our system and be of advantage to the inventor.

The second proposition,—that a patent shall not be forfeited for non-working,—is an addition to, rather than an amendment of the Convention. The working of an invention within a certain time after the grant of the patent is an almost universal requirement in Europe, in default of which the patent lapses. Whatever extension of this period can be obtained

is, therefore, more in harmony with our system, under which no working is required.

The next two propositions relate to distinguishing marks for goods. These received but slight attention in the original draft of the Convention, but at the first Conference they were made the subject of proposed amendment and at the second Conference of subsidiary conventions.

The first of these propositions relates to the admission of marks to registration. The question is: How shall the right to registration be determined? The Convention says that:

“Every trade or commercial mark regularly deposited in the country of origin shall be admitted to deposit, and so protected in all other countries of the Union. \* \* \*

“The deposit may be refused, if the object for which it is asked is considered contrary to morals and to public order.”

But nations like England, which give a definition to “trade-mark,” will not accept marks for registration which have been registered in other countries if they do not conform to the definition of their own registration act. Is there any common ground of registration? This is a most important question in all those countries where registration is the foundation of the right to sue.

The last two propositions, if adopted, will introduce novel principles into the Convention.

Unregistered marks have almost universally been denied any rights, yet it is apparent that great hardship might arise in the case of marks extensively used in one country being taken by a citizen of some other country and registered as his own. What should be agreed to for the prevention of the usurpation of marks used but not registered is therefore a most important question.

The last proposition, relating to unfair competition, which has long been recognized in France under the name “concurrency déloyale,” is most worthy of consideration in connection with the Convention, since the protection of the mark is in

many cases only a partial protection, as the goods may, without any mark, be so dressed as to deceive the unwary into the belief that they are genuine.

As before stated, the exigencies of unanimous agreement caused the Conference of Madrid to propose two agreements, which should become binding on those states only which adhered to them, thus forming subsidiary Unions within the Union created by the Convention.

These agreements were

- (1) For the prevention of false indications of origin :
- (2) For the international registration of trade-marks.

The justice of the first agreement, by which goods of every character, whether known as agricultural or manufactured, shall bear a true indication of the place of production, is apparent. It is not right that Elgin butter should be sold for Danish butter, nor that Danish butter should be sold for American, nor American cutlery for Sheffield. The agreement is a long step in the way of honesty and fair dealing between citizens of different nations.

Now, as to the second agreement, which provides for a registration of the trade-marks of the citizens of one country of the Union in all the other countries through the intervention of the home government at a minimum cost, everything can be said in its favor and nothing against it. The principle is most desirable. We think that the manner of its execution, as provided for in the agreement, will, with the amendments proposed at Brussels, make a good working agreement.

The procedure, in brief, is as follows: The citizen of any state applies to his own government for its intervention in the registration of his mark abroad. This is in a form prescribed by the home government. That government, in its turn, transmits a request for international registration to the International Bureau at Berne. That Bureau registers the mark and forwards it to each government of the Subsidiary Union, which registers it if not contrary to its laws. The

charge of the International Bureau is 100 francs, or twenty dollars. It is said that the charges for the same registration by agencies for that purpose, as published in their circulars, amounts to \$1110.

The Convention and its subsidiary agreements have received minute attention, because of their great importance; it must not be overlooked, however, that these are not all the treaties bearing upon the subject of industrial property. All civilized nations have such treaties. The following are those of this country: With Austria-Hungary, concluded 1871; Belgium, concluded 1884; Brazil, concluded 1878; Denmark, concluded 1892; France, concluded 1869; German Empire, concluded 1871; Great Britain, concluded 1877; Italy, concluded 1882; Japan, concluded 1894-1897; Russia, concluded 1874; Servia, concluded 1881; Spain, concluded 1882.

The great advantages to the inventor, the manufacturer and the merchant enumerated by us have been won by peaceful methods and granted for reasons of general welfare. They include the citizens of the small and weak nations, as well as the citizens of the powerful. They make international commerce easier and thereby tend to uplift the lives of the people everywhere and give happiness to all mankind.

FRANCIS FORBES,  
R. WAYNE PARKER,  
EDWARD Q. KEASBEY.

REPORT  
OF THE  
SPECIAL COMMITTEE ON TITLE TO REAL ESTATE.

*To the American Bar Association :*

The Special committee on Title to Real Estate beg leave to submit the following report :

The committee considered the " Danger in Land Titles," pointed out by the Hon. William Wirt Howe in his address as President of the Association last year, arising out of the character of " Federal Lien for Internal Revenue Taxes." Judge Howe put the matter thus: " Witness the injustice which was done, though not by any fault of the Court, in the case of the United States *vs.* Snyder, 149 U. S. 210, where an ancient lien for internal revenue taxes on property which had been used as a tobacco factory, was enforced against a subsequent purchaser and possessor of the land, although that purchaser never knew, or had reason to know, that the land had ever been used for such a factory, or that any taxes were unpaid." To obviate this the committee have prepared the amendment to the Revised Statutes of the United States accompanying this report, and recommend that the Association advocate its passage by Congress.

Respectfully submitted,

FERDINAND SHACK,  
JOHN DOUGLASS BROWN, JR.,  
DAVID L. WITHINGTON.

August 9, 1899.

## AN ACT

To amend Section Thirty-one Hundred and Eighty-six of the Revised Statutes of the United States relating to liens for taxes.

1     *Be it enacted by the Senate and House of Representa-*  
2     *tives of the United States of America in Congress*  
3     *assembled, That Section Thirty-one Hundred and Eighty-*  
4     *six of the Revised Statutes of the United States be*  
5     *amended to read as follows :*

6     SEC. 3186. If any person liable to pay any tax neglects  
7     or refuses to pay the same after demand, the amount  
8     shall be a lien in favor of the United States from the time  
9     when the assessment-list was received by the collector,  
10    except when otherwise provided, until paid, with the  
11    interest, penalties and costs that may accrue in addition  
12    thereto, upon all property and rights to property belong-  
13    ing to such person, *provided that said lien shall not be*  
14    *valid against any bona fide purchaser or incumbrancer in*  
15    *good faith and for a valuable consideration, unless,*  
16    *before the record of the instrument under which he claims,*  
17    *the officer charged with the collection of the tax shall file*  
18    *with the Clerk of the District Court of the United States*  
19    *for the District in which the property is situated, a state-*  
20    *ment containing the name of the person liable to pay such*  
21    *tax, together with the amount of the same, with any*  
22    *interest, penalties and costs that may have accrued in*  
23    *addition thereto, and it shall be the duty of the Clerks of*  
24    *the several District Courts of the United States to enter*  
25    *among the court records in a separate book kept for that*  
26    *purpose, when such statement is furnished by any officer*  
27    *charged with the collection of such tax, the names of the*  
28    *persons liable for any such tax, together with the amounts*  
29    *due from each, with the interest, penalties and costs that*  
30    *may have accrued in addition thereto.*

[The proposed new matter is in italics.]



**REPORT**  
**OF THE**  
**SPECIAL COMMITTEE ON "JOHN MARSHALL DAY."**

The Special Committee to whom was referred the resolution of the Illinois State Bar Association regarding "John Marshall Day," also the pamphlet entitled "John Marshall Day," containing endorsing responses of eminent judges, jurists and Bar Associations, also a letter of President McKinley and of the Hon. David B. Henderson, of Iowa, member of Congress, offer the following recommendations:

First.—That Monday, the 4th day of February, 1901, be observed by the bench and bar of the United States as "John Marshall Day," in the spirit of the resolution of the Illinois State Bar Association.

Second.—That a committee of fifty-one (representing states and territories and the District of Columbia) be appointed by the President from the membership of this Association, charged with the duty of publishing an address to the legal profession of the United States, setting forth the purposes of the observance of "John Marshall Day." Said Committee is charged with the further duty of preparing suggestions for the observance of said day on the part of state, city and county Bar Associations and other public bodies in the United States

Third.—That the said committee be authorized to request the good offices of the President of the United States in recommending to Congress the propriety of observing "John Marshall Day" on the part of Congress and other departments of the government of the United States.

Fourth.—That Congress also be memorialized to observe such ceremonies in honor of the great Chief Justice, who was

himself a member of that body in 1799, as in their judgment be deemed proper.

Fifth.—That said committee are further authorized to request colleges, law schools and other educational bodies of the United States to observe public ceremonies on said day.

Sixth.—That said committee be authorized to adopt such other measures as in their best discretion may be deemed appropriate for the furtherance of the project.

Seventh.—That said committee be given full power to act in the premises and report progress at the next session of their Association.

ADOLPH MOSES,	M. F. DICKINSON, JR.,
W. W. HOWE,	BURTON SMITH,
WILLIAM P. BREEN,	SELDEN P. SPENCER,
WILLIAM S. JANUARY,	BARTLETT TRIPP,
DAVID L. WITHINGTON,	HENRY ST. GEORGE TUCKER,
ROBERT D. BENEDICT,	HENRY C. RANNEY.
R. M. BASHFORD,	

NOTE.—The following is a summary of the proposition in regard to the celebration of “John Marshall Day,” which was contained in a circular sent to the members of the American Bar Association and to members of the bench and bar and adopted by the Illinois State Bar Association and referred to in the foregoing report:

It is proposed that the judicial department of the governments, both State and National, shall be the principal actor in a national celebration of “John Marshall Day” as hereinafter mentioned.

On February 4, 1801, John Marshall took his seat in the Supreme Court of the United States as the third Chief Justice, on a Commission signed by President John Adams, dated January 31, 1801. He sat in the Court thirty-four years.

It is proposed that a meeting take place in the Rooms of the Supreme Court of the United States at Washington, to which the President, the Vice-President, the Speaker of the House, the members of the cabinet and other dignitaries shall be invited, on which occasion, by direction of the Chief Justice, the judicial life and character of Chief Justice Marshall shall be the principal theme of the orator.

It is further proposed that a like celebration take place in the joint houses of Congress.

It is further proposed that on said day of celebration, every court house in the United States shall be closed to secular business and that suitable ceremonies take place commemorative of the great national event.

It is also proposed that on that day members of the bar shall be designated by boards of education to address the scholars of the public schools for the purpose of making the name of John Marshall a household word in the land.

It is also proposed that such committee appoint an editor or a number of editors to prepare a commemorative volume which, besides biographical data of the Chief Justice, shall deal largely with his constitutional opinions, in order that their influence may be widened throughout the non-professional world.

It is proposed to interest in this matter eminent judges, statesmen and lawyers who may be induced to endorse the idea herein suggested, before it is finally submitted for action to the American Bar Association.

(On motion of General John C. Black, of the Chicago Bar, the above proposition was unanimously adopted by the Illinois State Bar Association, with instructions to its delegates to the American Bar Association to present it at its next session in Buffalo, New York, August 28, 29 and 30, 1899).



PROCEEDINGS  
OF THE  
SECTION OF LEGAL EDUCATION.

*Monday, August 28, 1899, 3.30 o'clock P. M.*

The Section of Legal Education was called to order by its Chairman, William Wirt Howe, of Louisiana.

The Chairman delivered his address.

*(See the Address at the end of these Minutes.)*

Henry Wade Rogers, of Illinois :

Mr. Chairman, I think it is usual at this stage of our proceedings for the Chair to appoint a Committee on Nomination of officers of the Section for the next year. I therefore move that the Chair be authorized to appoint a committee of three for that purpose.

The motion was seconded and adopted.

The Chairman :

The Chair will announce that committee during the course of the afternoon.

Gentlemen, it gives me great pleasure to introduce to the Section, Mr. N. W. Hoyles, Q. C., Principal of Osgoode Hall Law School, Toronto, Canada, who will read a paper on "Legal Education in Canada."

Mr. Hoyles then read his paper.

*(See the Paper at end of these Minutes.)*

The Chairman :

I am sure we have all listened with a great deal of pleasure to this paper on Legal Education in Canada. Is there any discussion? If not, the Chair would announce the following members of the Committee on Nominations :

Henry Wade Rogers, of Illinois; P. W. Meldrim, of Georgia ; Charles Noble Gregory, of Wisconsin.

Henry Wade Rogers :

If I may make the suggestion, Mr. Chairman, I think it would be of interest to all the gentlemen who are here present if we could have an interchange of opinion on the subject of moot courts. I was very much interested in what was said by the gentleman from Toronto in reference to his experience with moot courts. I think the practice in the law schools of the United States is perhaps more satisfactory in some respects than the practice has been in Canada. There are different methods of conducting moot courts, and if we could have an expression of opinion upon this subject from those who are in the law schools of the United States, explaining somewhat in detail the systems in their respective schools, I think good would come from the discussion.

I see Prof. Huffcut of the Cornell University Law School is present, and I take the liberty of asking him to tell us how the courts are conducted at Cornell.

E. W. Huffcut, of New York :

The subject broached by the President of the Northwestern University is certainly one of very considerable importance as concerns the methods of legal education. At the outset I think it is necessary to distinguish between what we term in the schools, the practice courts, and what we term the moot courts. There has grown up in some of the schools in late years—most highly developed, if I am not mistaken, in the Michigan Law School—a practice court, in which there is the actual trial of causes at law or in equity, with all the machinery of the court, and, so far as practicable under existing conditions, a similitude of the actual operation of a court.

On the other hand, we have what we term the moot courts, which I think are older in their origin and much more common in the schools. These moot courts, so far as I am acquainted with them, are courts in which there is the argument of a cause, upon an agreed statement of facts or perhaps upon an appeal, with none of the machinery of a trial of the cause, and therefore, distinct from the practice court.

We found in the Cornell Law School that the ordinary moot court, as we had taken it from our elder sister schools, was not successful; that the ordinary argument of causes before one or two members of the faculty, by two or four counsel, as the case might be, was a somewhat arid and uninteresting event in the methods of legal education, and that students for the most part took no interest in these arguments unless they were compelled by force of circumstances to prepare themselves and actually argue the causes. Recognizing, therefore, the practical failure of the older system of moot court work, we set about to devise some practical substitute, and we devised it somewhat upon this plan: We divided our second and third year men into clubs, in each of which there are two sections, the senior club and the junior club, corresponding to the second and third years respectively of the course. In each section there are from eight to twelve men who are permitted, so far as that is practicable, to bind themselves together voluntarily for the purpose of legal argument. They are not assigned, in other words, to particular clubs, but the men elect themselves primarily, and then elect their successors, so that a club becomes a self-perpetuating organization, which in the course of a few years is supposed to have some history and some traditions and some pride as an organization. We, however, require that all those students who are not elected into clubs or who do not voluntarily form themselves into clubs, shall be put into a compulsory club for the argument of causes, but thus far we have not found it necessary to make many assignments, as most of the students have taken care of themselves in respect to membership in the clubs.

The procedure in the clubs is after this fashion: A statement of fact is agreed upon according to the old-fashioned method, students are selected for the argument, either one counsel on a side, or two, as the club may elect, and the rest of the club sit as judges. So that at every moot court argument every member of the club has something to do, either in the way of arguing a cause or sitting as a judge for the deter-

mination of the argument. Upon the conclusion of the argument it is customary for an oral opinion, rather in the nature of a decision, to be rendered by each member of the club who has sat as a judge.

I may say that upon the conclusion of the argument counsel are excused from the room, and the judges vote upon the decision and then counsel are recalled and an oral opinion is given by each member of the club. A member is then assigned to write an opinion which is filed in the records of the club, and if there be dissenting voices, a member is selected to write the dissenting opinion. In this way a full record is kept of all the proceedings. Each club has its clerk who is required to keep an orderly record of the club when sitting as a court.

An appeal may then be taken if the decision be rendered in the junior club, to the senior club, and a re-argument had in that section, and another decision rendered. In case there is not a unanimous decision in the second club, we permit an appeal to the faculty division, and the faculty division then sits to hear the appeal from the senior club.

In this way we have found that we have accomplished something that was lacking in the old-fashioned method of moot courts, namely, we have not made it an exercise once in the year to argue a cause, but we have made it an ordinary and common thing in the course to argue causes. A student may argue as many as six or eight cases in the course of a year, and whenever he is not assigned to argue a case, he is sitting to hear a case argued and to render a decision and perhaps to write an opinion upon it. The result has been, I think, that for the most part there has been a greater interest on the part of the members in the workings of the clubs, and further, there has grown up considerable rivalry among the clubs for the maintenance of a high standard of work which should attract the best men and induce them to accept an election to the club at the close of the year. At the close of the academic year the members of the first year class are elected in as members of Club "A," or Club "B," whatever it may



be called. (Each club usually selects the name of some famous jurist). There is, therefore, a rivalry on the part of the clubs to secure the best men of the first year, and there is a rivalry on the part of the men in the first year to get into the best clubs. The consequence is that the moot court work with us has gone on very much more satisfactorily since the inauguration of this system than it ever went on under the old system, and in place of a somewhat dreary and solitary event in the way of a moot court argument, we have now these clubs in which every man has something to do and we have this very wholesome rivalry among the men and among the clubs which results in a vital interest and pride in the work.

N. W. Hoyles, of Toronto, Canada:

Do the faculty take any part in these discussions? Are they present at all, and is there any record kept of the attendance?

E. W. Huffcut:

The clerk of each club is required to keep a record of the attendance of the members of the club. At the end of each term this is turned in to the presiding justice of the whole college court, who is a member of the faculty, and from these and the briefs and opinions filed, the records are made up for the club work exactly as they are for any of the other work of the course. The rules prescribe that a member of the faculty may sit in any court at his option, as a judge, and we make it a practice to visit the clubs occasionally, in order to see that the work is well done.

N. W. Hoyles:

Are there any moot courts also?

E. W. Huffcut:

Those are the only moot courts, except the appeals from these clubs, which are heard by three members of the faculty. The appeals to the faculty are not numerous. The appeals from the junior club to the senior club are more numerous. I suppose the members of the club have more confidence in the

members of the senior club than they have in the members of the faculty.

Simeon E. Baldwin, of Connecticut:

I suppose that of all the subjects which are ever before a law school faculty, this presents the most difficulties. The plan which is followed at Cornell is one which was in part at least, and I should say mainly in substance, followed at the Harvard Law School when I was a student there many years ago. We had our Coke Club, and our Marshall Club, with a rivalry between them, and at the Yale Law School with which I have since been most familiar, there are similar organizations; but in both those schools they were ancillary to the regular moot courts of the faculty, and I am afraid that sometimes the moot courts in the voluntary clubs are more or less formal and perfunctory. There were debates and cases tried, but they were tried very briefly, and then other business of the club was brought forward. That of course is the rock on which that particular device is most apt to split, if it touches any rock at all. Returns made by such clubs, in other words, may look all right, but very little of the time of the meeting may have been spent on the regular business which was the order of the day.

So far as my own experience is concerned, as a law school teacher, I have been in favor of maintaining the school clubs as a school institution, I ought rather to say the school moot courts as a school institution, but so far as possible, shaping stated cases so as to present some questions of fact as well as of law. We then proceed by taking a dozen men from the students in attendance and making a jury of them, and having the arguments addressed to this jury, under the presidency of a member of the faculty as judge. He would, at the proper time charge the jury, calling to their attention as in an ordinary trial, the questions of fact and the evidence bearing upon those questions of fact, and their duty as to their decision, and also of course stating the principles of law which would determine their verdict, according as they might

find the fact in dispute to be. That has the advantage suggested by Mr. Huffcut, of interesting a number of those who might otherwise be mere auditors, by making them jurors, and I have found that it has had a very beneficial effect in practice. Occasionally some of my colleagues—I never have myself attempted it—have got up practice cases such as have been alluded to, where witnesses were drilled as to what story they were to state, and all the course of a trial gone through with, witnesses, jurors, charge, argument, etc., not on any written statement of facts, but from such oral evidence, so to call it, as might be presented by the witnesses called. That of course requires a great deal of time and thought on the part of the man that conducts the court, and we must confess that it tends a little to make a matter of form of what really should be a matter of substance and reverence. An oath cannot with propriety be administered to a student who goes as a witness on the stand, and it is difficult to examine him without remembering that he is not sworn. So it is difficult for the sheriff to open the court without remembering that he is not a sheriff. But with all its disadvantage, I think that such cases occasionally stir up interest as nothing else does.

I am in favor of making attendance at moot courts obligatory, either directly or indirectly, and I am inclined to think that the best way is to do it indirectly, by making the questions argued the subject of examination. That is the practice at the Yale Law School; that is, the main facts on which some moot case turns, are stated, and the students are asked to give their opinion upon the law, as to which, of course, if they have been at the moot court and know how the case was decided, they have light which otherwise they would not have.

Samuel C. Bennett, of Massachusetts:

I have been much interested in what the last speakers have said. We had at one time in the school with which I am most familiar, the system of voluntary moot courts. Students were allowed to take part in them if they chose; some of them did choose to do so, but after the first third of the year

the interest was very slight and the courts were not a success. Since then we have adopted a different system and we now require every candidate for a degree to take part in the moot courts during his senior year, once as counsel and once as an associate justice. Cases are begun by writ, the pleadings are put in the ordinary form, and the matter then comes up before a single justice who is a member of the faculty. He passes upon the papers presented and sees that the point is raised in proper form. He also requires some brief outline of the argument which counsel purposes to make before the full court, and unless he is satisfied that the argument is worth something, the student is sent back for another week and comes up again. A student is not allowed to go before the full court until he can outline something of an argument. The case then comes up before the full court and each of the associate justices, who are students, writes an opinion upon the case and afterwards reads it in the court. The chief justice is always a member of the bar and sometimes also a member of the faculty of the school. Usually we are favored by having members of the bar in the city sit as the chief justices.

The steps taken as here outlined have improved the moot court work with us very much. The arguments are much better than they were under the former system, and we feel very much encouraged with the way the moot work is progressing at the present time.

Francis B. James, of Ohio :

The Cincinnati Law School always maintained a moot court, presided over by a member of the faculty as justice and two of the students as associate justices, and made the attendance of students compulsory. The cases argued were always on a written statement of fact raising a question of law. Three years ago the University of Cincinnati, established a law department having but a first year class, and two years ago the Cincinnati Law School, became the Law Department of the University. For one year the moot court was continued but since then abandoned. The students have organ-

ized voluntary moot clubs. Whether the compulsory moot court will be revived is a question which has not been discussed by the faculty. Personally, I believe in the practice courts spoken of by Mr. Huffcut.

The Chairman :

May we hear from Mr. Harriman of the Northwestern University.

Edward A. Harriman, of Illinois :

The Northwestern University Law School has a regular moot court in which a statement of fact is prepared and the question argued as to the law before a member of the faculty. There is little interest in moot courts on the part of the students—possibly because of the unreality suggested by the speaker this afternoon. As this law school is situated in Chicago, many of the students spend a portion of their time in offices, and they become very much more interested in a case involving five dollars before a justice of the peace in which they are personally engaged than they do in a question involving great principles of law which is simply a moot question. We attempted at one time to have a practice court, but we never found it possible to have questions of fact tried satisfactorily. I doubt if we ever succeed in doing that. For myself, I believe that the club system of voluntary moot courts, possibly encouraged as it is at Cornell—for I think that the compulsion can hardly be more than encouragement—is the best system.

John C. Gray, of Massachusetts :

The system of club courts at Harvard is in substance about the same as that described by Mr. Huffcut. The principal difference is that it is entirely voluntary. The faculty has nothing to do with the club courts. The suggestion that those students who do not go voluntarily into clubs should be told that they must do so, struck me as interesting, for I think some of our good men do not go into clubs. But so far as the clubs go, they have been a great success. I think there is

nothing connected with the law school that has been more distinctly an improvement than this matter of student clubs to argue cases. When I was in the law school, as when my friend Judge Baldwin was there, there were clubs, as he says, but each club was carried on practically by three persons, one student on each side to argue, and one student to sit as judge, and the rest of the students took very little interest in it. There is at present no need for the clubs to compel the men to attend, although there is a small fine imposed. When a case has been heard, the judges in consultation have their beer and tobacco and then the counsel are called in to hear the results that have been arrived at. Practically there has been no difficulty in keeping these clubs going. The oldest of them celebrated last year its quarter centennial.

There are two defects in these clubs. The students go into them at the beginning of the first year. I used to think that a mistake, but I am convinced that nothing interests a student so much in the law as the club courts, but the men have generally had enough of club work in the first and second years, and consequently there is very little of it in the third year when the men are really most fitted for it. The other fault is this. The men arguing before each other naturally get into slipshod ways; they are a little too free and easy. They do not stand up and talk as counsel should talk in court—in a dignified way. In other words, they do not have a good manner. I think I must recognize it as a defect in the students of our school as compared with students who have gained their knowledge by attending courts, that they do not have a good court manner when they leave the school. Still, with all their defects, I entirely agree with Mr. Huffcut that these clubs are excellent institutions.

The moot courts are not very successful. I wish they were more so. It is well for the students to argue in a somewhat more formal manner, as they will before the faculty, rather than to confine themselves to their clubs. Moot courts used to be compulsory, but there were so many excuses that we

have given up the compulsion. They are rather dwindling. We have experimented with practice courts. Last year we tried Mrs. Maybrick, with a jury from the under-graduates, and it was quite successful. But to make that kind of thing a success is pretty hard work for the professor, who has to get up the evidence on both sides.

If any gentleman can suggest a way in which moot courts can be made attractive and influential in a school, it will be a very important addition to legal education. My friend Prof. Lee can tell about the club courts at Harvard a great deal better than I can, because he has had practical experience in them. The faculty have nothing to do with them, except that occasionally one of the professors is asked to sit as a judge.

A. E. L. Leckie, of the District of Columbia :

Do they prepare the cases for themselves ?

John C. Gray :

The students prepare the cases themselves, although occasionally they ask the professors for them.

A. E. L. Leckie :

Why couldn't the students themselves prepare the evidence ?

John C. Gray :

Practically, I think that would be pretty hard. The witnesses could be made to swear to anything.

A. E. L. Leckie :

Why couldn't you take the record of a court where all the facts and questions of law are submitted ?

John C. Gray :

You mean to give the witnesses all the evidence that is contained in the record ?

A. E. L. Leckie :

Yes ; give the students the bill of exceptions.

John C. Gray :

The trouble is that there are a great many of the most interesting questions which you cannot raise on pleadings. I

think most of the students believe that the ideal system is to plead to issue and then to supplement it by agreed facts.

A Member :

You can get a very suitable case, possibly, from some of the cases that go to the courts of last resort, and that would save the professor all the hard work, and give the students an opportunity to practice.

John C. Gray :

Yes, our practice cases are really jury cases—cases where we try facts.

A Member :

Let the successful party be awarded something, and perhaps that would stimulate them to get up cases.

John C. Gray :

That might be possible. I never have prepared one of those cases myself. The difficulty is, I think, in preparing the evidence.

A Member :

Would it be possible to have a committee of the students hear a case actually tried in court, to hear the evidence, and then go out and argue it and decide it amongst themselves?

John C. Gray :

Do you think you could get lawyers to try their cases once before a regular court, and then again before a moot court?

A Member :

No, that is not my suggestion. I say let the students go into court and hear a case tried, and then return to their quarters and argue the case and decide it.

John C. Gray :

I don't know why such a plan as that would not be feasible. It is a very good suggestion. Certain students could be sent in to hear a case, and then come away before the argument was made, and appoint two of their numbers to argue the case on each side, and the others to sit as judges. I think that would be a good idea.



A Member :

Do you regard moot courts as a method of teaching practice ?

John C. Gray :

I think the use of a moot court is to get a man to stand up and put a case neatly and well to a judge. I do not think it is useful for teaching practice, but it is useful for teaching men to talk well on their feet.

F. R. Mechem, of Michigan :

Our experience in the Law Department of the University of Michigan has been so unlike that which has been detailed here, that possibly I may be able to add something of interest to this discussion. We have two kinds of courts—club courts and a practice court. The club court is purely a voluntary organization conducted by the students themselves. The practice court is a part of the department, and I think that after nearly five years of experience we may say that it has been shown to be eminently satisfactory. In the first place, we have a professor of practice who gives his entire time to that work. He is called the judge of the practice work. The Regents have provided for us a court room, a clerk, a clerk's office with blank books, and all the paraphernalia of a court room. All the members of the senior class are required to take part in the conduct of cases in the practice court. We divide the work into two classes. In the first half of the year the work is largely upon assigned statements of fact designed to lead to an issue of law, to be argued and disposed of as such. For that purpose the students are required to arrange themselves into groups of four. Then to each group of four, a statement of facts, with printed instructions is given. Two of the students take on each side as attorney, and are permitted to choose the state in which the venue shall be laid and according to whose practice the case is to proceed. Having selected from the statement of facts the facts which in their opinion give rise to a cause of action, they are expected to

begin a suit in the venue which they have thus selected and to sue out of the clerk's office an actual process, and have it served, and proceed in regular form upon the respective sides until an issue of law has been reached by the pleadings.

Then they are required to file a notice of this fact with the clerk, and the case first comes before the judge of the practice court for examination and criticism upon the pleadings. He calls the group of students before him and examines them upon the pleadings. Why did you begin your action this way? What is the purpose of this allegation? What are general rules regulating the kind of process you have adopted, etc.? A careful and thorough criticism is made of what they have done. If the pleadings are not satisfactory, they are required to be re-written. After the pleadings have been approved by the judge of the practice court, and an issue of law has been reached upon the pleadings, the case is then assigned to some member of the faculty for the law argument, and upon the day assigned the students go before that member of the faculty and argue the question of law. So far as this branch of the work is concerned, the students go into it with the utmost enthusiasm. The case is very carefully briefed and fully argued.

An appeal may be had from the decision to a Supreme Court composed of three other members of the faculty. During the second half of the year we try jury cases. Much has been said here this afternoon about the difficulty of arranging cases for trial. It is a difficult matter, but it is not insurmountable. The professor having the matter in charge calls before him a group of four students, who are to act as attorneys and each pair brings, say, six other students to take part as witnesses. The professor has previously formulated and has in mind the facts of some comparatively simple controversy—drawn perhaps from his own experience at the bar, or suggested by some reported case—which was based upon two or three transactions—say, the making of a certain contract, its subsequent assignment and its later breach. He selects

from the students who have come as witnesses, two actors, as plaintiff and defendant, endeavoring in so doing to choose those who have most readiness and spontaneity. He then distributes his witnesses in different rooms, which, for the purposes of the case, represent different offices, counting-houses or other places in which the scene of the transaction is to be laid. He then details to each of his principal actors privately the part he is to take in the transaction, insisting rather upon ideas and results than any particular language, and directs him what and when to do, so as to work out his side of the transaction. Dates and places assumed are agreed upon and publicly announced. When all is in readiness, the transaction begins; the plaintiff, for example, goes to the office of the defendant, and there, in the presence of such of the witnesses as have been assigned to that room, he makes his contract or other act, and retires; the other transactions are then gone through with in the same manner, until the whole has been enacted, different groups of witnesses seeing different parts and no one, perhaps, the whole. All then reassemble, the assumed facts are reduced to writing upon blanks provided for that purpose, and with some general directions, the groups disperse. It is then the duty of the plaintiff's attorneys to gather together all the facts which have been assumed or enacted, decide upon his cause and action, sue out process, and proceed regularly to bring the case to an issue. When an issue is reached the case is set, in its order, for trial by a jury of students regularly empaneled and presided over by the judge of the court. On the trial, the facts assumed are to be testified to exactly as agreed, while the other facts are to be reproduced exactly as they occurred, no one being at liberty to alter or supply facts. From the circumstance that the facts have been so arranged as to present an issue of fact and that no two witnesses have seen the whole transaction and from the natural and inevitable inability of witnesses, however honest, to agree entirely in the reproduction of what they have witnessed, enough conflict

of views arises to make an issue and give zest to the proceeding. The testimony as will be seen is not "cooked up" nor is it the intention to put into the witness' mouth the testimony he is to give, but simply to outline the case to him and what is required and to leave him largely to work it out in his own way. A bright student will know how to acquit himself creditably. In other words, the professor relies largely upon the spontaneity of the witnesses after they have grasped the idea.

We try every year from sixty to seventy-five jury cases, and it has been the testimony of members of the bar and others, that they would not be able to tell, if they had not been informed of the fact beforehand, that the case was not a real one. The students gain all the experience of getting a case to issue, the examination of witnesses, the arguing before a jury, etc.

Now, it may be said that that kind of case is unreal. So it is. Yet it has an element of reality. When an actual case is brought before a jury to be tried, you are after all simply trying to do what we try to do in the practice court, namely to reproduce before that jury some transaction that took place somewhere else. We pledge our students to the truth, to state a thing precisely as it occurred. Of course there is a certain amount of assumed fact. We assume that so and so was a broker and so and so a real estate agent, etc., as I have already stated, but with the exception of that, everything is real and actual. It is just as real to the jury who are trying the case as is a case in court. The students go at it with all the energy and zeal they are capable of, and our experience has been that since the introduction of the practice work, not only has the interest and efficiency of the instruction in pleading, practice, etc., been enhanced, but the demands upon the library have vastly increased. The students are exceedingly technical—perhaps somewhat hyper-technical—in regard to procedure; a great number of motions are made and all sorts of defects and objections raised before an issue is finally reached.

After five years, I think our experience justifies me in saying that we have no course that is regarded as so valuable. Our only regret is that we cannot very greatly extend the work that is being done. We have no difficulty in the matter of decorum. The professor who has charge of the court tries to inculcate high ideals of conduct and deportment on the part of the students.

This kind of work is certainly most helpful to us and can be satisfactorily performed. Having once a number of cases in your mind, they can be made to serve for successive years. We have thus far had no difficulty in arranging statements of fact which result in jury trials. We occasionally have a criminal case which is of course more difficult to arrange, but adds largely to the interest.

We begin the trial of a case, say, at two o'clock in the afternoon and usually get through by six o'clock. The arrangement of the case in the first instance consumes perhaps three quarters of an hour, rarely, if ever, more than an hour.

The interest taken by the students and the excellent work that they do, and the benefit that they derive from it, I think has entirely justified the maintenance of the practice department.

A. E. L. Leckie, of the District of Columbia:

In the Georgetown University of our City, there has been inaugurated a Moot Court, very much along the lines of that established in the Michigan Law School, and it has proved a grand success. This Moot Court consists of three courts, a Court of Law, an Equity Court, and a Court of Appeals. The Law and Equity Courts each have their judge selected from our bar, and in active practice, and other proper officers. The clerk of the courts is a salaried officer. The Court of Appeals has three judges, selected from among the most eminent members at our bar. For the purpose of hearing the appeal cases, this court sits every Friday.

The professor in practice prepares a series of cases, and has them printed in pamphlet form, which is furnished to the

students at the beginning of the year. These cases, so far as practical, are selected from cases already tried by some court, and they are so arranged that each one will take up a new and important principle of the law in the most convenient and practical order; so that students who follow the Moot Court work have an actual training in many of the principles which they will have to contend with in their future practice.

Two or three students from the second and third year classes are selected to represent each side of the case. The attorneys for the plaintiff are required, on the statement of facts, to prepare a declaration, file it with the clerk of the court in the regular way, and then, under the rules, the attorneys for the defendant are obliged to plead or demur to the declaration, etc., until the case is regularly at issue and set for trial.

The utmost enthusiasm prevails among the students at these trials, and at times large numbers of spectators and first year students are present to hear the arguments, which, as a rule, are carefully and well prepared. At times they have a jury trial, while at others they confine themselves to arguments before the court. In this manner they have succeeded in keeping up an interest, and at the same time giving the students much practical knowledge both as to the method of procedure and the principles of the law.

If the side that loses is not satisfied, they may take an appeal to the Court of Appeals. This is also done in the regular way; a properly prepared transcript of the record, brief of the testimony, and also the attorneys briefs of the law on both sides, are filed, and then argued before the Court.

Charles Noble Gregory, of Wisconsin:

I hardly think we have a scheme that differs at all from those that have been laid before you. We call on every man either to argue a case or to assist in determining one, in each semester, so that a man in a three years' course, works on six cases at least. That is obligatory. In the next year this work will be made the subject of conditions, and if not done

in a manner which, in the judgment of the member of the faculty presiding, entitles the student to a mark of 70 on a scale of 100, if he fails to reach that percentage of excellence, it will stand in the way of his graduation. In addition we have the voluntary club, copied after the Harvard Law Clubs, and I think that is working very well, though only a limited number of students have availed themselves of this purely voluntary privilege. We have called their attention to the system and they have to a limited extent organized in that way.

I have been much interested in the judgment of all the gentlemen engaged in the cause of legal education as to the success or failure of moot courts. In our school we get failure from some of the men and success from some of the men. I find that there are splendid arguments made in the moot courts, and I find splendid opinions rendered by earnest and scholarly young men sitting as judges; but I find, on the other hand, that there are a lot of men trying to get through on a minimum of work in classes and moot courts. I suppose, though, we shall always have such men with us.

William S. Curtis, of Missouri:

I do not know that I can contribute anything new in the way of suggestions. We have a regular moot court in the St. Louis Law School. It is compulsory, in the sense that we call the roll and not only keep track of what the men have done on the cases that they have been assigned to, either as counsel or associate judges, but we have a record of the attendance of those students. I do not know that there is any particular value in that, except it is one way of knowing which of the men are interested. I think that is the kind of work that ought to be developed. We print a weekly paper called The Moot Court Record, in which appear the statements of fact on which these cases are based; the points and authorities of the men, and the briefs that are finally used at the hearing. We have found this to be an excellent idea. We print also the opinions rendered by the associate justices. You may say that

appears to be a hazardous thing. I think that if you should try it, always selecting for your associate justice the men who have made the best records in the school, you will find that the men will put an amount of care and preparation into those opinions that will be a stimulus to all others who may have to write opinions. I believe the expenditure of a few hundred dollars in a printer's bill in connection with the moot court of a law school is a good thing.

Based upon the roll which we keep, we have tried the experiment of organizing special classes in practice. Towards the end of a man's course, if he has not done what we think is the proper amount of work, we will organize a special class in practice, occupying about a month in the latter part of the year, and corralling a few of the shirkers who at that period need to be perhaps compelled to do some practical work. I find that a great many students will come there out of curiosity to see something new.

The moot court is aimed to teach that which is most important, namely, the power to make a decent argument.

Then, too, we make it an exercise in pleading. I believe it is very valuable to have the statements of fact so drawn, and make it a point, that the student shall plead to an issue either of law or of fact. It may not reach what the member of the faculty concedes to be the real question in the case, and there may be quite a number of preliminary matters to be cleaned up, but these statements of fact are valuable to the student. They are printed in this journal that I speak of about a month before the final oral hearing.

Emlin McClain, of Iowa:

The Committee on Legal Education, in preparing its report for last year, got together such information as it could in regard to the method of conducting moot courts, and in doing so wrote to professors in practically all the law schools of the country and received replies from a considerable number of them. I may say that the first impression left by the replies received was rather discouraging. It seemed to be the general



impression that moot courts are not what they ought to be, considering their importance, and that the matter of making them what they ought to be was a very difficult problem. Professor Mechem proposes the best remedy for the difficulty, in suggesting that the law school ought to have some one on its teaching force who can give a large amount of time to such work. It is preposterous to expect a man who has his full regular work to do every day to give to the moot court the attention which it needs and which is essential to its success. With the proper attention I believe that the court can be made more profitable than perhaps any other one exercise in the law course.

It is not impossible to have regular trials of issues of fact and this might be accomplished, I think, without their being a real transaction to furnish the basis of the case, as recommended by Professor Mechem. The danger I see in attempting any considerable number of real transactions arises from the danger of their becoming merely farcical. Let a written statement of facts be prepared which gives the ultimate facts rather than the evidence. Let the attorneys assigned to each side prepare the witnesses by whom they expect to prove the ultimate facts, and let them prove those facts by testimony which would be competent and sufficient if the facts were real. The statement of facts should not be read to the jury at all, nor in any way introduced during the trial. The court directs the jury that the facts proved by the evidence before them are the only facts which they can consider in the case, and then, to avoid the danger that the attorney will try to help his case out by proving more facts than his statement of facts justifies, the presiding judge can simply exclude from the jury at the end of the trial, evidence as to those facts which are not warranted by the statement. In some such way it is practicable, I think, to have a trial by witnesses before a jury.

But even without witnesses and a jury, the moot court trial is extremely important, and I would have it conducted as in a regular court. I see no reason why the attorneys represent-

ing the respective parties should not be compelled to determine what are the material facts out of a mass of facts contained in a statement, some of which are important and others not, and to prepare the usual pleadings from such a statement and select the facts there stated, so far as material to their respective sides of the case, for presentation to the court as evidence.

In my experience it has not been found practicable to require the attendance of all the students. I doubt whether enforced attendance is profitable. But by compelling every one who has been assigned to a case on the docket, to be ready with his case, and by holding him strictly accountable for the management of the case, good attention to the business of the court may be secured. Recently, the practice has been introduced of actually marking the men on their moot court work just as they are marked on their examinations. If a student acting as an attorney, prepares a faulty pleading, or fails to demur when he should do so, or does not see the question of law involved, or present it in a reasonably good manner, his marks are made to show it and this has a stimulating effect.

As to voluntary courts, they have not been a very great success with us, although frequently tried. Men do not seem to have much confidence in the decisions of their fellows, and the court tends to become a mere debating club. Certainly I should not feel satisfied to have the entire moot court work turned over to voluntary clubs composed of, and carried on exclusively by students.

John M. Dickinson, of Tennessee:

My experience as a law teacher has been so limited that I feel that I cannot contribute very much of value to this discussion. I have had charge of the moot court in the Vanderbilt Law School, at Nashville. The result of the work there has been in the main very satisfactory. I believe the students regard it as a valuable part of their work. All students are compelled to be present, the juniors and the seniors, in the two years' course. The roll is called, not only at the beginning, but at the close of the exercises, for obvious reasons.

The court is presided over by one of the students, a member of the faculty being always present to guide them, note the character of the work done, keep it to a proper standard, and to keep order, if necessary. It has been found impracticable to deal with questions of fact. If you undertake to formulate certain testimony, it either becomes very burdensome and very complicated, or entirely lifeless. Therefore, the cases that are argued with us present questions of law alone. Two classes of cases are dealt with, *nisi prius* cases, and cases upon appeal. All of them are presented in a formulated printed statement of facts, and these involve irrelevant as well as relevant facts, and the students are expected in preparing pleadings to discard the irrelevant facts. In the *nisi prius* cases they are expected to determine what remedy they ought to have, whether in law or in equity; and, if in law, they file a declaration, and that is followed by a demurrer or plea. In equity they file bills, etc. There is a clerk. The opinion is in writing, delivered by one of the students at the following session of the court, if he is ready; if not, he has a longer time to get ready. One day in each week is given to these exercises, which last usually from an hour and a half to two hours. After the juniors have gotten some insight into the law, they participate actively in the moot court work, always being present, however, all the time. The opinion and all the papers are examined and criticised, and returned to the students. They are marked and affect the student's grade. This method might not be practicable in a large school. Each student during the course takes part in from five to seven cases. I can say that the work is generally productive of good results. All the students attend, and they all take an interest in it.

E. W. Huffcut, of New York :

I have been deeply impressed by what Prof. Mechem has said regarding the work at the Michigan school. I am also heartily in accord with the suggestion made by Chancellor McClain to the effect that it is preposterous to expect the regular members of the faculty engaged in teaching substan-

tive law, to take charge of the practice work of the law school. We have become so convinced of this that we have now a colleague, Prof. Redfield, who takes entire charge of the teaching of practice and all the practice courts; and, so far from finding that he has any leisure, he finds that he is so overburdened if he does the work as he wishes it to be done, that he has asked for and has been given an assistant. So that during next year we shall have two men whose entire time is taken up in the teaching of practice and in the examination of practice papers and in the hearing of practice cases. I think I suggested at the outset that a distinction is taken practically between a practice court and a moot court. We take it, at least, and I should judge from the discussion here, that other schools take it. The practice work, dealing with pleadings and procedure, is done in the practice department. A large number of papers are prepared in this practice department, and I have no doubt that we shall be able to do some of the work which Prof. Mechem has stated is done at Michigan. I think all schools may well profit by the happy experience of the University of Michigan in its practice department. I have sometimes questioned whether that success may not be in part due to a peculiar aptitude on the part of the incumbent of their chair of practice. I do not know whether it may not require a special order of genius to do that work, and do it well. I am rather inclined to think it does, and that not all of us are fitted to carry on that branch of the work. Yet I feel convinced that the law schools in these days are bound to provide a sufficient amount of practice work so that the students may go forth without being absolutely at sea as to what they are to do and how they are to do it. There is now very little opportunity outside of the schools for students to learn that sort of work before they are admitted to the bar.

John C. Gray :

Like Mr. Huffcut, I was particularly struck with what Prof. Mechem said about the courts for the trial of issues of fact as an almost daily practice in the University of Michigan. I

think if any of us had been asked if we should think such a practice would be a good one, we should have said: "Yes, but we doubt if it can be carried out." Now, it has been carried out, and I want to suggest that no greater service could be done the Bar Association, and particularly this Section of the Bar Association, than by Prof. Mechem's writing a paper for us on the subject, going into the matter in full detail, and particularly giving two or three actual cases and their conduct from beginning to end.

Fred. H. Aldrich, of Michigan:

Of course, the education of a lawyer is for the purpose of preparing a man for the practice of law. I think it is the experience of every lawyer and every judge to find that young men who practice with them and before them, are lacking more in the ability to present a case in court than in any other regard. Young men go out from the University and enter the office of old lawyers, to whom they are able to render valuable assistance in every other department than that of the trial of causes. These lawyers may trust them to prepare briefs in their most important cases, and yet, if they send them into court, it is into a justice's court to try some trifling issue.

The instruction of the University is upon abstract principles, and the deficiency of the young man when he comes from the University is in being able to enter into the trial of a case involving concrete issues and to act upon the instant in full command of the learning which he has received from the University. That is why the practice court is of so great importance. When a certain statement of facts is placed before the young lawyer he ought to be able to perceive, instantly, the legal questions that may arise with reference thereto.

To keep the case in the practice court within definite limits, the professor having the matter in charge, or some other person, could prepare for each side of the case a statement of facts such as a lawyer makes before introducing his testimony

in a jury trial. Then let the counsel for each side introduce any testimony that would legally have a tendency to prove his case, or defence, as set forth in his statement of facts.

The Chairman :

The hour at which we ought to adjourn has arrived, and we will adjourn this session until to-morrow afternoon at four o'clock.

TUESDAY.

*August 29, 1899, 4 o'clock P. M.*

The Chairman :

It is understood that the session to-day will be devoted to a conference of the State Law Examiners, and in order to ascertain who are present and what States are represented, I will suggest that the Secretary call the roll.

The Secretary :

I will call the States which, so far as the Committee are informed, have adopted the rules of the State Board of Law Examiners. If any gentlemen present know of any States having adopted them which are not included in this list, I will be very much obliged to be informed of the fact.

The Secretary called the roll.

William P. Goodelle, of New York :

That is an increase from last year?

The Secretary :

Yes ; Maine, Georgia, Louisiana and Wyoming have adopted the law in the last year.

The Chairman :

Of course, gentlemen, a conference of this kind is to some extent informal and *sans gêne*, but in order that it might go off as rapidly and cheerfully as possible, we took the liberty of

making some suggestions of questions which it might be useful to discuss on such an occasion.

First.—Ought examinations for admission to the bar to be oral or in writing?

Second.—What is the best form of questions to be used in the examination of applicants for admission to the bar?

Third.—Upon what subjects ought applicants to be examined, and what value should be given to each subject in the marking?

Fourth.—What evidence of good moral character should be required as to applicants for admission to the bar? Should the examination include the subject of legal ethics? If so, what should be the scope of the examination on this subject?

Of course, we do not mean to say that the conference to-day should be confined to these topics, but we merely take the liberty of suggesting them as possibly giving rise to useful discussion and debate. The Chair would be very glad to hear from any members of these boards of examiners, and would feel that the discussion of these subjects would be very useful.

If you will allow me I will ask Judge Danaher of Albany, who has had much experience in these matters, if he would initiate the discussion.

F. M. Danaher, of New York :

I would prefer that Mr. Goodelle, who is the President of the Board, should lead the discussion upon that subject.

William P. Goodelle, of New York :

Mr. President, as to the first suggestion, whether examinations should be oral or written, it is my judgment that written examinations are the only ones to be relied upon to test the legal qualifications of the student; as to whether oral examinations should be resorted to as supplementary to the written, the examiners must be governed largely by circumstances. In this state, because of the large classes, a general oral examination is utterly impossible.

For instance, take our classes in the City of New York numbering at times well up towards 300. To give such a

class an oral examination would consume more time than could be given, and for various other reasons, would be impracticable. I place but very little confidence in such examinations to determine the legal qualifications of applicants. Prior to the existence of the State Board of Law Examiners, for several years I served upon the Committee of Examiners for my Judicial Department, and the classes were not so large but that something like a fair oral could be given as supplementary to the written, and I came into the State Board quite prejudiced in favor of such orals being given, but my experience since has quite changed my views upon the subject.

If circumstances and time permit, I still favor an oral, not so much as an aid to test legal knowledge, but to see the applicant face to face and by a few questions to determine in my own mind, whether or not he is possessed of the other qualities to make a successful lawyer. I think one can judge of the general make up of a man, and, perhaps, his chance of success, or otherwise, very largely by a short oral examination, but, as I have said, for the purpose of testing his strictly legal qualifications I put very little confidence in such examinations.

In our state last year we examined 1001 applicants and admitted about eight hundred, as I recall. Now to call a person up for an oral examination, you must devote to him at least from fifteen to twenty minutes, and then he would not be able to solve to exceed three such legal problems as we give in our written examinations, and at that rate we could examine from three to four in an hour, or about twenty-four per day, and to go through a class of 275 to 300, at that rate, would be wholly impracticable.

Our system is this: Under the rules of the Court of Appeals, our Board is given the power and discretion to examine either by written or oral process or both; while our examinations are mainly written, we reserve to ourselves, under the rules which we promulgate, the right to examine such candidates orally as we think best.



In passing upon the written examinations, we find three classes of students. One class whose answers are so satisfactory that an oral examination is not required; the examination of the second class is so poor and unsatisfactory, that however good a brief oral examination might be, we would not admit them. The remaining class consists of a very few that are hovering so near to the margin line, that the examiners may be in doubt as to what disposition should be made of them; it is to this class, only, consisting perhaps of a dozen, more or less, to which we confine our oral examinations, and reserve their cases from the class, when making up our judgment on the others.

Notice is quietly given to such to appear at a stated time for such oral examination, and the same is then given and there is an opportunity in that way to remove, if possible, the doubts in their respective cases. But I say to you, gentlemen, that the instances are rare, and I do not have but one in mind during my whole experience, where an oral has helped out a person who failed on his written examination. Usually, as naturally would be expected, the oral is less satisfactory than the written. Therefore, upon this subject, my conclusion is, that a general oral examination in New York state is impracticable, and that such examinations when given furnish but a very inadequate and unsatisfactory test of the legal acquirements, as such examinations are given.

But if considerations other than such acquirements are to be considered, as before stated, such as the age of the applicant, length of time of his study and general characteristics indicating success or otherwise, then advantage might come from supplementary oral. But we adopt no such rule; some of the states, as I understand, do. With us, a person is either in or out. He either passes or fails to pass our examination. Every one stands upon the same footing. If the applicant satisfactorily answers  $66\frac{2}{3}$  per cent. of our written questions he passes, otherwise not.

The Chairman :

We have listened with much interest to this statement in regard to the wide experience in New York, where the number of lawyers reminds one of the amount of capital of these New Jersey corporations. If we might compare small things with great I would ask Mr. Merrick, of Louisiana, if he can tell us something about oral examinations there.

E. T. Merrick, of Louisiana :

In my state we are not troubled with the number of students that they have in New York, and we get only a few before us during the year, say eight or ten men. We have tried the oral examinations, and we find that they work all right, but it takes an hour and twenty minutes on an average to examine a man. Our committee as now composed is a permanent committee. Under the constitution of 1898, the Supreme Court was allowed to lay down such rules of disbarment as it saw fit, and it then organized its examining committee as a permanent committee for conducting the examinations of candidates for admission to the bar, giving them the right also, upon an examination into the character or standing of a lawyer, to instruct the Attorney-General of the state to file his suit, sending him the statement of the facts ; and the Attorney-General is obliged to file a suit ; and one of the members of the committee or two of them, take part in the conduct of the suit against the recalcitrant member of the bar, if he is considered unfit for practice. This, you see, gives this examining committee in our state a little more power than they have anywhere else. And acting under our authority, or at least deeming it within our authority, we have absolutely declined to examine some men who had been brought before us, for the reason that we thought they were unfit. Not for any immoral conduct, but for unprofessional—if I could use that expression about a man who was not yet a lawyer—for unprofessional conduct. For instance, one man was brought before the committee this year who had been advertising himself as an attorney-at-law. We absolutely declined to examine him.

We wrote our report, sent it to the Supreme Court, and we informed him that if he desired examination he could announce it to the committee and enforce it legally, if he wished to try to do so, and that was the last we heard of it. But in a small state like ours we think that an oral examination is better, because, as the gentleman who has just spoken has said, we are brought face to face with the student. We have the opportunity to see him; and having the time, and having so few men before us, we are able to give them the time and attention, and to put them at their ease and see that they are not embarrassed by the oral examination, so that we get at a pretty just estimate of their ability.

One of the later questions which has been propounded by the Chairman of the Section, is in regard to professional ethics,—I think that is one of the most important things to be considered by examining committees. I think that if we could keep out the men who come before us, who are doubtful, we would soon raise the character of the profession the world over. That is the great difficulty with us, that we have too many men who are going to give work to the disbarment commission; and there is one whom we have already proceeded against since I left the state. That is, instructions were left there for a suit; and it will make less work for us in future if we have, in examining a man, examined him with regard to professional ethics, in regard to what he knows of right and wrong as well as to what he knows of the law of the state.

A Member:

May I ask why it is that you have only eight or ten a year?

E. T. Merrick:

We have a university which takes the rest. I will state this. This year I think we have turned out about 60 per cent. of the applicants and the Tulane University has turned out 40 per cent. at least. So you see we are clearing up the profession for the future.

The Chairman :

I think Mr. Merrick will bear me out in the statement that the figures are about these,—the graduates of the law school of Tulane University in New Orleans every year are about forty or fifty.

E. T. Merrick :

About forty or fifty : yes.

The Chairman :

And of those about 60 or 70 per cent. pass their examinations and are entitled to become members of the bar without further application to the Supreme Court, which accounts in some degree for the small number examined by the Board of which Mr. Merrick is a member.

E. T. Merrick :

I would like to state also, Mr. Chairman, when a man has been rejected by the University, who has been trying for admission to the bar, he cannot come before our committee; and that also reduces the number of men that come before us.

John C. Gray, of Massachusetts :

I should like to ask Mr. Merrick what he thinks of that plan of having the law school grant degrees, or whether he thinks it would be better that they all should come before the State Board.

E. T. Merrick :

There was a time in our state when it would have been most advisable to have had all the candidates for admission to the bar come before the committee as well as to go through the university. There were several colleges there that were rather lax in their examinations. But with the University that we have now, Tulane University, practically the only law school in the State, it so happens that under our present conditions there is not a particle of necessity for requiring that. I think they get a thorough legal education and a fair examination; but I think that for the safety of the state, ordinarily it would be advisable, particularly where there is a number of colleges, to have them all come before the committee afterwards.

The Chairman :

Would Judge Dewey of Massachusetts be kind enough to let us hear from him ?

Henry S. Dewey, of Massachusetts :

Mr. Chairman, in Massachusetts our examinations are written. This year we tried an experiment which I think was to the satisfaction of all the examiners, something we had never done before, during the existence of the county boards or since the State Board was established about two years ago. We found, after reading over the books in our examination of last month that there were five or six young men whose written books were uniformly bad, under the standard that we adopted, all of whom had failed two or three times before, and there seemed to us no special reason why any one of those men would ever be able to write a better book. As an experiment we sent notes to these young men to have them come before the Board. Five of them came. We talked with them. We gave them perhaps 30 minutes apiece. We told them frankly in the beginning that none of their written examinations were satisfactory, and we told them that we sent for them to come in to explain to us if they could why it was,—if there was some defect,—if as a matter of fact they could show us that they could make good lawyers, although they couldn't write a good paper. In this particular instance, of the five who came in, two succeeded in pulling through and getting a favorable report. Two of the five did not. Two of the five showed to the examiners that they had not been studying. That was the trouble with them. The first two were apparently quite bright in a way. They had studied law four or five years. Both of them admitted that they had had several years' experience in offices, and we finally gave a favorable report. The fifth one the Board is still holding in abeyance. Of course Massachusetts is not a large state in point of population compared with the State of New York. We had this year 311 applicants, and of that number we reported favorably upon 181. But even with that number it would not be practicable to give oral examina-

tions to all. But from the little experience we have had this last month, I can say for myself that I believe it is a very good plan when a man has tried three or four times and has failed, at least to give him a chance to meet the members of the board face to face.

Something has been said about the scope of the questions on legal ethics. I think it is rather a good thing to have some questions on legal ethics on the papers. But in my experience, and I have been eight or nine years on the two boards, I have never been able to draw up any questions that would do any good towards showing what a man's character really was. A bright man, a well-read student, knows what he ought to say in reply to the questions that we are apt to ask him on legal ethics. I was surprised in our last examination,—we only had one question on legal ethics, and it happened to be the very last one of the forty questions. The question was something like this: "If a client were to come into your office with a summons in his hand, saying, 'Here, I have been summoned in as defendant on this suit. I owe the plaintiff the money and I ought to pay him, but I want you to get me all the time you can.' Would the attorney be justified in taking the case?" Well, the answer, of course, as according to the leading books on legal ethics, was that an attorney would be justified in taking the case and getting all the delay that would go with an ordinary suit. He would not be justified in filing any false affidavits for the sake of getting delay, but he could file his answer and wait for the case to be reached, etc. But a curious thing appeared as I was reading through the books, and after I had read forty or fifty of them and got the swing of the answers, I found that when I was reading the book of a bright, intelligent man from one of our two law schools who was answering his questions well, and I knew we would pass him whatever he said about that question, he would almost always answer the question in the affirmative, that it was all right for the lawyer to take such a case. If I was reading a miserable book that would average

about 30, 40 or 50 per cent., where it was evident that the applicant did not understand the business of the lawyer, or the responsibilities of the lawyer, as I approached this question, I would say to myself, "That man is going to say he wouldn't have anything to do with such a case as that, it would be entirely contrary to his attorney's oath." And so it was. In the case of nine-tenths of the applicants whom we had to reject, they would answer that they as attorneys would have nothing to do with such a case. Now, it may be that they meant all right about it. It may be that they answered that question as they thought was right, but I very much doubt it; and I really did not get much help in deciding upon the qualifications of the applicants in this last examination based on their answers to that question on legal ethics.

As to the form of the questions, if all our applicants were of one class, if they all came from the law school, I would think that perhaps it would be well to ask quite a good many definitions and statements of principles of law; but it is my experience, and I am speaking only for myself in this matter, because I have not conferred with the other members of the Board as to what I should say—that it is not quite fair to a student who has prepared himself only in an office and has not had the benefit of the schools, if he is asked for definitions and statements of principles of law; and it is therefore our rule, so far as practicable, to put the questions that we ask in the shape of, for instance, a stated case.

We have never tried, in advance of the examination, to attach a set value to the separate questions; but in practice we settle that, each examiner for himself, as he reads over the books. That is to say, we have forty questions. Now it very often happens that in preparing our questions we think they are all pretty good, that they are all pretty nearly equally good. When the books are finished and the answers come in, we find, to our surprise, that there is some trouble with two or three of our questions. They are not as difficult as we thought they were; they do not bring out the answers we sought, or, all

through the list of applicants, the men fail satisfactorily to answer those particular questions. Now, we decide amongst ourselves that we will not take off the full 1-40th for failing to answer such questions. That is the only way in which we give different values to different questions. Our examination is begun and ended in a single day. We have two papers, each usually containing about twenty questions, one for the forenoon and one for the afternoon, and we have about two and a half to three hours for each session. Our papers are all marked the same way. For instance, real property, equity, and so on, are all marked the same way, excepting that we sometimes ask more questions on real property than on some minor branch of contracts, for example. At the last examination, we had a total of forty questions. Now, there might be perhaps four questions on each topic, so that a student would have a better chance, because he would have four different questions to answer.

As to the number of subjects examined upon, I went over all this matter last year and it is printed in the proceedings of this Section, in the report of the Association. Our system, having five examiners, is to make five different groups of subjects, containing each about four topics, and each examiner contributes about eight questions covering all or a part of his particular set of topics. When that is done, we all get together, and these questions are read over and commented on, and one of the examiners takes the forty or fifty questions and makes them up into two papers.

Floyd R. Mechem, of Michigan :

Is it your experience that you spend time enough on your examinations to test a man thoroughly when you give but a single day and ask twenty questions at a session ?

Henry S. Dewey :

Yes ; in the majority of cases I do not think there is any doubt about that. For instance, in this last examination we had 210 applicants. I think that with possibly 30 of the



applicants, it would have been well if we could have asked more questions. With 180 I do not believe it would have made any difference in their showing whether they had had half as many questions asked them or twice as many, because the 180 are not very difficult to decide upon. They usually are manifestly qualified or easily unqualified.

Floyd R. Mechem :

Your questions must be comprehensive in their nature to make them a fair test.

Henry S. Dewey :

We try to have the questions comprehensive. One rule we all adopt, we try never to ask a question that any applicant who is well qualified to be admitted to the bar cannot write a satisfactory answer to. That does not necessarily mean that he shall get the answer right, because we do not require that. Of course, a good many of our questions are close questions, that involve a well-known principle, and if a man shows by his answer that he grasps the question and knows the principle involved, we give him credit for his answer even if he decides it the other way from the way in which the Supreme Court decided it when a case was finally carried there, presumably on the contention of the attorney who lost it that he had a good case.

It is the exception when a candidate who has finished his course at a law school and got his degree fails to pass. There are two reasons for that. One reason is that a man who gets his degree from either the Harvard Law School or the Law School of the Boston University, is pretty well grounded in the principles of law, and another reason is that we give them the credit. For instance, if a man has finished his full course at the law school and his percentage on his book is not quite up to the standard, we are very apt to give him a credit of five or ten points for his degree and that may carry him in. That is on the theory that no examination, whether oral, or written, or both, is perfect. There is no body

of 100 men coming to be examined, where some men will not be rejected who are better qualified than some men who are admitted, and some men are admitted perhaps who are not really well qualified. We take all things into consideration and we decide the best we can on all the facts that we are able to get hold of, whether or not a man is qualified to be admitted to the practice of law. If a man comes before us, for example—take two extreme cases—if a man twenty-two years of age comes before the board after having studied law for two years in an office without having been to college, or without having had any training in a law school, and he gets, on his written examination, a percentage of say five or ten per cent. below what we consider to be the standard, such a student has not reached the standard, and there is nothing by which he can show us his qualifications excepting his examinations, because twenty-two years of age is not really old enough. A man, to practice law, ought to go through college; a man who is to be admitted to the bar, ought now-a-days, if he can, to go to a law school. Now, right along side of that man, is another one who has had the advantages of a college education, has got his degree in college, has spent four years there, and spent three years in a law school and got his degree, and if he is twenty-six or twenty-seven years of age when he comes up, and he gets that same per cent., we have those other facts to look at. We say he has the proper age, he has had the proper experience, he is entitled to that much consideration, and so we may pass him in. We all believe that the length of time that an applicant studies law counts for something. I personally believe very strongly in that. Take the case of the young men who try four or five times in succession and do not pass. I am always inclined to help them along, and if I can find by inquiry that they have reached, say, the age of twenty-six or twenty-seven years, that they have studied law four or five years, that they have been attending to business, that they have been diligent in the offices where they have been study-

ing, I am always inclined to give them credit simply for the length of time that they have spent at study.

William P. Goodelle:

What do you say in the case of a law school graduate and one who has studied elsewhere. Neither of them passes your examination, but because one has been in the law school you give him five points and even mark him in. Is it not probable that the one who has not had the advantage of the law school would be entitled to pass just as well as the other?

Henry S. Dewey:

Perhaps he may be, but I do not think that a farmer boy who comes up and takes the examination after two years of study on a farm, is presumably so well qualified to practice law as a college graduate who has studied three years in a law school and got his degree; and whereas we can see our way clear to give credit to a man who has a degree, we are not estopped from doing that because we cannot do the same for somebody else who has not had the same advantages.

Franklin M. Danaher, of New York:

I have taken from the records of the New York State Board of Law Examiners a few facts, which I think will prove interesting, and will answer to an extent some of the questions put to Judge Dewey. They bear on the relative merits of law school or office education as factors in passing rigid examinations for admission to the bar, and the special advantages, if such there be, in being a graduate of a college or university; they also show that in New York State, at least, the great percentage of applicants seek a higher education in the law by attending law schools.

During the past ten months we received 808 new applications for examination, of which we approved 785. We examined 973 candidates, however, the difference representing those who had been rejected one or more times. Of these new applicants 276, or 35 per cent., were college graduates; and 509, or 65 per cent., were not. Of those whose applications

were approved, 296, or 38 per cent., obtained their legal education in law schools exclusively and had no office experience; 162, or 21 per cent., served regular clerkships in law offices and had no law school training; and 327, or 41 per cent., attended law schools and served law clerkships in addition. This shows that in New York State upwards of 80 per cent. of the applicants appreciate the benefits to be derived from a systematic and well-directed course of legal study, which can only be obtained, owing to conditions now existing in law offices, under competent and trained educators in law schools, and that they act accordingly. The practical results justify their course. Of the 296 applicants who had law school experience exclusively, 32, or 12 per cent., failed to pass one or more times; of the 162 who had office experience exclusively, 36, or 22 per cent., failed to pass one or more times; or, in other words, those who had exclusively law school training, were almost twice as good as those who had office experience only. The difference, however, may be due in part to the fact that at least 80 per cent. of those that had exclusive law school training were also graduates of colleges or universities and that but few of the law clerks had had that advantage. Of the 276 who were graduates of colleges or universities, 33, or 12 per cent., failed to pass one or more times; of the 507 who were not, 82, or 16 per cent., failed to pass one or more times. This proves that in the practical school of passing examinations for admission to the bar, the advantage in favor of the college graduate is only 4 per cent. as against the non-graduate. We hold ten examinations in each year; three in New York City, two in Brooklyn, two in Albany, two in Rochester, and one in Syracuse, and thus far have had all except the one scheduled to be held in Syracuse in October, at which we expect to have at least 250 applicants, in addition to those whose records we have treated as above. In October, 1898, we examined 192 applicants; 161 of these passed and 31, or  $16\frac{2}{10}$  per cent., failed. In January, 1899, 226 applicants were examined; 175 passed, 51 failed; percentage of

failures,  $22\frac{1}{2}$  per cent. In April, 1899, 100 applicants were examined; 76 passed, 24 failed; percentage of failures, 24 per cent. In June, 1899, 455 applicants were examined; 387 passed, 61 failed; percentage of failures, 15 per cent. In the June examinations, the university graduates who attend law schools most generally apply, and our percentage of failures is much less than at any other time of the year. Out of 973 examined in 10 months of this year, 174, or 18 per cent. failed one or more times. There were 10 women examined, all of whom were admitted. The oldest applicant was 51 years of age; the average age of all was 25 years and 4 months; which shows that the students are well advanced in years before they begin to practice, with a prospect before them, in addition of some years of weary waiting for clients that may never come. In New York a graduate of a college or university or of a law school has neither favor nor privilege because of the fact, except that a graduate of a college with a degree that is registered as maintaining a satisfactory standard is entitled to an allowance of one year in the three years of required law study. Nor is the fact that he is 25 or 50 years of age taken into consideration. There is a set problem placed before each, which he must answer according to the standards which we have fixed, and he is adjudged regardless of his age, color, sex, or preliminary education. If he passes, all right; if he does not, he must try again; and that is all there is in it. All questions are of equal value, except that Pleading and Practice and Constitutional questions are rated at one-half the value of the others. We know that the Legislature is apt to repeal at any time all we know on the subject of Pleading and Practice, and as we practice with a Code on our desks for ready reference at all times, we will not exact from the student knowledge that we do not possess in an eminent degree ourselves. Constitutional questions are rated at one-half values for the reason that they are only put as a test of general knowledge, and not because we expect that the applicants know much about it, or that it has any great weight

in determining their qualifications to enter upon the practice of the law.

There are two facts to be learned from these statistics; one is that those who have had a law school experience are twice as good as those who have been educated in the office exclusively; and that it is of no great advantage, so far as New York State is concerned, to be a college graduate in applying for admission to the bar, whatever may be its general effect in after life.

I thank you gentlemen for listening so patiently to what I have had to say, for I know that nothing adds so much to the pleasures of an occasion like this, and makes ones auditors so happy, as to have big bunches of statistics thrown at them with no chance of escape.

The Chairman :

If I might be allowed a suggestion in passing, it has occurred to me that possibly the experience of the boards of examiners in the civil service might be of some use as throwing light upon the questions which have just been mentioned. You are aware, I suppose, that the boards of civil service examiners have a way of giving what they call relative weight, and they give a greater relative weight to some kinds of subjects than to others, so that a successful answer in those subjects would count more than it would in others. It would be interesting to hear from some of the gentlemen present as to whether that is a good thing in legal examinations. It seems that in New York they do give less relative weight to an answer in regard to their code of procedure, as, for instance, whether the sheriff is enjoined by the code of procedure to heat a court room, than they do to answers in regard to real property. Then there is another thing that is done by boards of civil service commissioners, and that is to give a large relative weight to experience; as, for instance, between two engineers to be examined for employment in connection with the water works of a city, the man who has had an experience of three years, say, in actual engineering, together with the same technical educa-

tion, and the ability to answer the same questions, ought to be preferred to a man who has had no experience at all ; and therefore they generally give a relative weight of some magnitude to experience. It might be an interesting question as to whether that idea might not be introduced into legal examinations by giving relative weight to a man who had been three years in a good law school and graduated with distinction, or to the man who had been three years in a first-class office where he had had a large experience and the fact could be shown to the board.

But I must not speak in regard to this matter, and I would call upon Mr. Richmond, if he would be kind enough to tell us something about Maryland, and especially in regard to the rule *nisi* relating to the subject.

Benjamin A. Richmond, of Maryland :

Mr. Chairman, Maryland is such a young sister among the states in the matter of law examiners, that I do not know that our experience will be of much advantage to members from the other states. Our system however, as we have formulated and adopted it, seems to differ in some respects so radically from the practice in the other states, that it might be of some interest to the members here to know our method of procedure. As you are aware, Maryland is a common law state. She has not the advantage, or the disadvantage, whichever way it may be considered, of being what is called in the West, I believe, a "statute or code state." We practice under the common law ; we have all the common law forms. We have never adopted a code system, and so in the past, our methods of admission to the bar grew up as a sort of Maryland common law. The student came before the judge, the judge asked him half a dozen questions or more, just as he saw fit ; examined him two hours or two minutes ; he admitted him or rejected him. Latterly, this was found to be unsatisfactory. All sorts and kinds of people, applicants not at all qualified, were coming to the bar, and the legislature endeavored to remedy that to a certain extent, and passed a statute

by which each *nisi prius* court should, upon application of a student, appoint a committee to examine him in open court. Well, those examinations soon developed into a desultory farce. The object of the law and the idea of the statute was that the examination should be a public one, in open court. That was soon evaded by the judges themselves upon the pretext of economy in time; and during the session of the court, while one judge would be holding court, where two or more judges sat, the other judge would take the student into a room, in the presence of any body who chose to attend. That was found very unsatisfactory. In the year 1898, recognizing the fact that some reform was necessary to be had in the State of Maryland, principally through the very laudable and energetic efforts of Judge Sharp, and Attorney-General Poe and Chief Justice McSherry, the Chief Justice of our Court of Appeals, our highest court, and my colleague here, who was a member of the Legislature, we had a statute passed which differs in its *modus operandi* from any statute, probably, that has been passed upon the subject, and has some features of the law in other states which we think are an advantage over any other features. Under the statute, a board of three law examiners was appointed, for one, two and three years. At the end of each year the one whose term expires is replaced by a new appointment. These three are appointed by the Court of Appeals. The Court of Appeals also formulates rules for the guidance of the examiners, and the examiners are bound by these rules. The Court of Appeals also prescribes the exact subjects and the number of them upon which we shall examine. We have no discretion. Fifteen subjects are laid down by the Court of Appeals upon which we must examine. What value we shall give in the examinations to each subject; how we shall examine, whether orally or by written examination, is left largely to our discretion. But there are fifteen subjects, viz.: Elementary law, legal ethics, constitutional law, international law, torts, wills and administration of estates, equity, evidence, contracts, corporations, criminal law, pleadings and



practice, real property, personal property and domestic relations. Those subjects are laid down for us and we cannot change them. Our examinations are to be held certainly twice a year. The rules fix June and November, and such other times as the Court of Appeals shall by special order direct. Up to the present time, owing to a saving clause in the act by which all students who had matriculated in the law schools of Baltimore City prior to the passage of the act were excepted from the operation of the act for two years, the applicants have been few. In our November examination of 1898, I think we had seven. In this past June examination we had nineteen. In November we shall have more. But next June, of course, as many of the students in the law schools will then come under the jurisdiction of the act, the number will be greatly increased. Under the rule of the Court of Appeals, we are obliged to give each student six hours' examination. We can give them more, as much more as we please, but we cannot give them less than six hours. We determined to give them nine hours. We hold three sessions, one in the morning of three hours, one in the evening of three hours, and on the following day, in the morning, one of three hours. At each of those sessions we submit to them 25 questions in writing. That makes 75 questions covering the whole 15 subjects, or an average of 5 questions to a subject. But we do not rate the value of each subject as equal to its fellow at all, as seems to be the idea in Massachusetts. We think that the subject of real estate, for instance, deserves much more consideration in our estimate of a man's ability to practice law, than his answers upon the subject of domestic relations or international law or something of that sort. In the first place, we value each 25 questions at a total of 100—each paper. We have three papers, one for each session. We value the whole of the questions of each paper at 100; and the student who satisfactorily answers 200 out of those 300, or rather makes 200 points out of 300, has passed, as we believe, a satisfactory examination. Real estate, although

it is one subject out of the five on one paper, is valued on that paper at 50. Legal ethics we value at 10. International law I think we value at 15; equity at 25; corporations at 20; pleadings and practice at 40; evidence at 30 and so on. We attach a particular value to each subject, such as we think the subject deserves. And we go farther than that. Not only do we attach a different value to each subject, but we attach a different value to each particular question that we ask. Before the examinations we rate upon our paper the value of each question asked. Some of our questions are valued as high, I think, as eight, seven, six, five, three, two, and down as low as one. We do not believe that a correct answer to one question that might be asked is as valuable as a correct answer to another question that might be asked. A man might be asked a simple question; he might be asked, "What is an estate in remainder?" Well, that could be answered easily. Is he to have five for that, and no more, or the same value as is given him for an answer to a very difficult case question compiled especially of complicated facts on the statute of frauds? We do not think so; and so, after we have made up our questions, we go over them before the examination and value each question. The total, however, of each paper amounts to 100, and if an applicant answers what we regard as a difficult question, which we have valued at six or eight, we give him the full value of it; and if he answers an easy question which we have only valued at one, he gets but one. Speaking of easy questions, such as "What is an estate in remainder?" reminds me of the answer given by an applicant in our court some years ago under the old system, when I was one of the committee appointed by the court to examine an applicant. I asked him what was an estate in remainder, and I thought he gave me a very good answer. He said an estate in remainder was what was left of a man's estate after his debts were paid and the lawyers were through with him. Now, Mr. Chairman, not to extend my remarks, but to give you some idea of the full working of our system, after the applicants are examined they

hand in their papers; and then, with a value to each subject, the total of each paper valued at 100, and an aggregate value of 300 before us; and, with the further fact before us, of the value of each question upon each paper, we go to work upon the papers; and we think, and our experience justifies us in thinking, that by that method we have approached as near as we can to a perfectly fair, thorough and impartial investigation of the knowledge of these applicants upon these different subjects. It has worked very satisfactorily so far.

Now, we attach great significance to the fact that our examinations are entirely written. There is one objection to an oral examination which has not been stated here by any member, which would be a serious one to me as an examiner. Of course, you will concede at once that if a system of this kind is to prove satisfactory to the public at large, to the applicants, to their friends and to the consciences of the examiners themselves, it should be regarded and should be in fact absolutely fair and impartial, and removed from any possible taint or suspicion of unfairness, influence or anything of that kind. When, therefore, you have prepared a written paper setting forth certain questions; when that paper is submitted to twenty gentlemen simultaneously, where they have an absolutely equal opportunity of answering them satisfactorily if they can, where all the opportunities to each are exactly equal, and they have made their answers, and their answers are compiled and estimated and computed by us, and they fail or pass, it must be said that therein and thereabout there is not the slightest room for suspicion or suggestion that there was any unfairness or any influence to procure the admission of this one or procure the rejection of that one. But the moment you abandon your written examination, and five or six young men are put upon what the gentleman from Massachusetts, I believe, called or intimated, as a doubtful list, they are to be brought before you for further examination. Why? Why are they to be brought up for further examination when twenty have been rejected absolutely? The twenty rejected men might well

complain, "If we had been put on the doubtful list and had an opportunity to explain and to be consulted face to face and to be examined orally, we might have had a chance to get through too." Nay, more. Some gentleman who is on the doubtful list, comes up and has an oral examination and he passes. Immediately it is open to the suggestion and the suspicion that his admission was accomplished by indirection, by the influence of this one or that one; he is a friend of Jones; Jones has a "pull" with the examiners; Jones is a relative or has some influence. Now, law examiners, so far as I am aware, wish to be kept as free from that as possible. With a written examination free and equal to all, and simultaneously applied to all, there is absolutely no room for the suggestion of unfairness anywhere along the line, and as long as I am an examiner I shall advocate and insist upon written examinations, and trust nothing to private, oral examinations in rooms, which may be perfectly innocent, and fair, and honest in character, but do lay the whole subject open to the suspicion of influence and aid from the outside and indirection.

Now then, after our applicants have been examined and we have passed upon them, they are informed whether they have passed or whether they have been rejected. We then make our report to the Court of Appeals, stating the result of our work, and accompanying that report,—and that is another argument in favor of written rather than oral examinations,—we are obliged to submit the questions and answers and the work of each separate man, which is filed and made of record in the Court of Appeals. The Court then publishes what Judge Sharp very properly calls an order *nisi*, which we think it is a most excellent provision and ought to be adopted in every state. The Court of Appeals then publishes as prominently as it can in the leading newspapers of the state, the report of the law examiners, that Brown, Jones and Smith have passed a satisfactory examination, and that within 30 or 60 days, whatever day they name, if no objections or exceptions are filed to the admission of either of those gentlemen, they can

come to the Court of Appeals and be sworn in; and the certificate of the clerk of the Court of Appeals that a gentleman has been admitted to the bar of that court entitles him to admission to every bar in the state; and that is the only way you can get into the bar of the State of Maryland now. When that order *nisi* is published, we have a State Bar Association there, and it is made the duty of the Committee on Legal Education, to examine into the moral qualifications of each one of these young men. So, here you have an order *nisi* published to the world calling everybody's attention to the fact that Mr. Jones has passed a satisfactory examination mentally; but is he morally fit? Is he a good man? If he is not, any man can object and file exceptions, and if nobody else will, it is the duty of the Bar Association to object, if they by scrutiny or research can find that he is not a fit man. On those objections the court hears evidence pro and con. Now, one of the questions submitted by your secretary to be considered by the Boards of Law Examiners here, was whether the evidence of a man's moral character as prescribed in most of the states, is sufficient. In our state the certificate of a responsible solicitor with whom the applicant studied, is made sufficient. Whether that is sufficient evidence for the Court of Appeals or not is a question. It does seem to me that the ease with which certificates are procured, especially from a solicitor with whom a man has been studying law, from one who feels friendly to him and is glad to aid him in every way,—it does seem to me that the suggestion is a good one and perhaps the Court of Appeals ought to inform itself in some other way, by some evidence besides a bare certificate of the solicitor with whom the man studied. Now, we think our system a good one. My brother Wirt suggests that I should say to you, gentlemen, that we do not pass upon the moral qualifications of the applicants at all. The applicant files a petition with the Court of Appeals stating that he has studied law so long with such and such a gentleman, or that he is a graduate of such a school, or of such a college or law school, or whatever his qualifications are, and

the Court of Appeals refers his application to the examiners, and whomsoever the Court of Appeals refers to us, we must examine. It makes no difference to us if he has not studied law a day; if the Court of Appeals refers him to us we must examine him, and we do not examine into his moral qualifications. We do however examine as to another matter, and that is his general preliminary education. Defective grammar, extremely ignorant writing, bad spelling, things of that kind, weigh with us in attaching importance to his answers; and I think it ought to do so with all examiners. A man who is grossly ignorant of the commonest rudiments of elementary education sometimes might pick up law enough to answer the questions satisfactorily, and yet when he came to the bar, by the murdering of the King's English, by his dreadful orthography or by the general ignorance of his handwriting, and papers and speech, would do discredit to the bar of the state. We think those things ought to be taken into consideration. Now, Mr. Chairman, and gentlemen, I beg your pardon for having taken so much of your time, and I thank you for your attention.

William P. Goodelle:

May I ask one question—as to whether or not the preliminary education is required?

Benjamin A. Richmond:

It is not required, but it is within the permission given us by the Court of Appeals to inquire into it.

F. M. Danaher:

You file with your report the question papers and the answers with them?

Benjamin A. Richmond:

Yes.

F. M. Danaher:

Do you think it very dignified to enter into an argument with some student as to your capacity to pass upon his examination? Has that ever been brought up?

Benjamin A. Richmond :

No ; I do not see the pertinency of it.

F. M. Danaher :

But, for instance, if you file your question papers and the answers of the student, and they are a matter of public record, has the student not a right to bring you up on *certiorari* ?

Benjamin A. Richmond :

No.

F. M. Danaher :

But if as a matter of record, as a mathematical demonstration, you have made an error in your rating, and that man should have been admitted, is he not entitled ?

Benjamin A. Richmond :

He has no remedy whatever so far as a new examination is concerned. Our examination on that matter is final. He can have no new examination in the Court of Appeals. He can except to our finding on the examination he has had and then the Court of Appeals can go over his answers to see if they are sufficient.

F. M. Danaher :

Then it is not final ?

Benjamin A. Richmond :

The examination is final so far as that is concerned.

F. M. Danaher :

There is an opportunity then of having your judgment and your correctness questioned.

Benjamin A. Richmond :

Yes, sir ; we return his answers to the Court of Appeals so that if exceptions are interposed, the Court of Appeals can look over his answers and decide as to his competency.

John C. Gray, of Massachusetts :

Then suppose that in his rating you have made a mistake, and he says, " here is a question on which you have marked me two, and you should have marked me ten ? "

John S. Wirt, of Maryland:

We do not return with the papers the markings put upon them. That is a private matter with us.

George M. Sharp, of Maryland:

The old law, which was repealed by the act of 1898, provided that there might be an appeal to the Court of Appeals by any one rejected from the Circuit Court, and shortly before the act of 1898 was passed, a student did appeal, from Cumberland, if I am not mistaken.

Benjamin A. Richmond:

He didn't appeal; he made an original application to the Court of Appeals, which he had a right to do under the law.

George M. Sharp:

At all events, he had been rejected by the Circuit Court and went to the Court of Appeals and was examined again. The provision for an appeal from the Circuit Courts by those rejected had existed in Maryland for a long time. The Court of Appeals, in framing the rules of court required by the Act of 1898, preserved the feature of an opportunity to review the action of the examiners under the form of an order *nisi* as it has been called. The report of the Board of Law Examiners is treated in practice as the report of an auditor or master in Chancery. It is ratified unless objection is made. If objection is made the matter is heard and determined just as exceptions to an auditor's account would be heard. Anyone may file exceptions.

A petitioner who has been reported by the Board as unfit for admission may except, in which event his papers will be examined by the court and the report of the Board ratified or rejected. Judge Danaher has suggested that it may put the Board on the defensive and in an undignified position to have its decision questioned. We do not think that, any more than an auditor whose account is excepted to, is put in an undignified position. The Board in fact having nothing more to do with the case after the report is filed. Mr. Richmond has



called attention to the fact that the By-Laws of the State Bar Association require the Committee on Education to investigate the character and attainments of all applicants for admission to the bar and to except to the ratification of the report whenever the committee thinks the applicant ought not to be admitted. This refers not only to his moral character, but to his examination. The committee would not hesitate to criticise the Board if their examinations were lax or there was any favoritism. The Bar Association is very much in earnest and will brace up the Board of Law Examiners if it becomes necessary. In the case of exceptions by applicants who have been rejected by the Board, it is the duty of the committee to appear for the Board, or rather for the Bar Association, in support of the action of the Board before the Court of Appeals. The committee may employ counsel and do all that is necessary to be done to procure a full investigation into the qualifications, mental and moral, of applicants for admission to the bar. It will therefore be seen that the Maryland plan is pretty broad and comprehensive.

As a matter of fact, the committee has investigated the character of all those who have applied since the rules were adopted. Inquiry was made in the counties from which they came, and their reputation was found to be good. There was a record in a police court against one young man. He had been charged with playing poker on Sunday. He had been acquitted, however, having proved an alibi. He was absent from the neighborhood, in which it was alleged the offence had been committed, on a fishing trip. The committee would have preferred to learn that the young man's alibi was that he had been to church, but fishing on Sunday was not regarded sufficient ground on which to urge that he was not a man of good moral character.

Exceptions were filed by the committee in one case. In this case the petition stated that the petitioner had studied law in a certain law school which the committee thought ought not to be recognized. They believed, too, that if the applica-

tion was allowed to pass unchallenged and an order was passed by the Court of Appeals admitting him to the bar, it would be interpreted by the authorities of the school as a decision that their students were entitled to be examined on an equality with students of good schools. The committee suspected that the school would advertise all over the country that the Court of Appeals of Maryland had decided that students of that school were entitled to go before the Board of Law Examiners. This would have been a bad precedent and might have been embarrassing not only in Maryland but elsewhere.

Another thing may be said about the order *nisi* and the publication of the names with the opportunity given every one to object to the final order admitting to the bar. It is a menace to all unworthy persons. The faculty of one of the laws schools where a student was detected cheating at examinations, announced that when any student was detected in cheating, he would not only lose his degree, but if he succeeded in passing the examinations of a State Board of Law Examiners, exceptions to his admission would be filed. It has been stated that the ordeal of a publication and the possibility of exception has deterred unworthy persons from attempting to become members of the bar. They fear to run the risk of a public attack on their moral character and exposure of their conduct.

The Chairman :

It might be a matter of some interest to know whether another method adopted by civil service commissioners could with advantage be carried out in these written examinations, and that is, to have them sign only by numbers, the names being enclosed in envelopes, and the persons who examine and rate the papers not knowing who the candidates are until after the rating has been completed and the envelopes opened.

Floyd R. Mechem :

That is the method adopted in Michigan.

Benj. A. Richmond :

I had some experience with that in one case only, and that was the examination of a lot of young men who were applicants for a position at West Point, and the Congressman of the district appointed five gentlemen, one from each county, to examine these gentlemen, and twenty-one of them appeared. We examined them in that way. We required each applicant to sign his papers with a *nom de plume*, and on a card he put his *nom de plume* on one side and his real name on the other, and enclosed that in an envelope, and when we were done examining the papers and had awarded the position, we then opened the envelopes and found who the gentleman was that had passed. That absolutely robs the committee of the slightest possibility of partiality. It is a very good suggestion indeed.

The Chairman :

We would be glad to hear from Kentucky on this question, if there is any representative of that state present.

Edmund F. Trabue, of Kentucky :

I am not a member of any board of examiners. Of course I know something about the method of admission to the bar in our state, but I cannot conceive that the lawyers here could profit by adopting any feature of our Kentucky method. I believe there is only one state in the Union which has a worse method, and that is Indiana, which, I understand, requires no examination at all. In Kentucky we have the University of Louisville, whose diploma entitles to admission to the bar. I remember on one occasion a lawyer in Louisville presenting a class to our Circuit Court and announcing to the judge that he had a number of young gentlemen who had passed satisfactory examinations before their professors, and who had never fought duels with deadly weapons either in the state or outside the state with citizens of the state, and moving their admission to the bar. They were all admitted as a matter of course, under the law of Kentucky. There is also a method of getting member-

ship to the bar through examination by the judges of some of the courts, or examiners appointed by a court. Every applicant must have a certificate of good moral character from the county judge, but I have never known of that being refused, and probably it might be a serious matter to a county judge to refuse an applicant—notwithstanding our law against fighting duels with deadly weapons. The result is that a man is probably never refused in Kentucky on account of his character. I have never heard of such a refusal.

The examination of the applicant is purely perfunctory. A prominent lawyer tells of witnessing such an examination where several judges were present. None of them found any question the applicant could answer, and they turned him over to the attorney who was able to get no correct answer to any question. The applicant was then excluded from the room, and after consultation, one judge announced that nobody would ever employ the applicant “anyhow,” and he might as well have his license.

We once had as examiners in Louisville, Judge Harris (who was here a while ago) and Mr. Helm and they did good work. They are both excellent lawyers, and felt the importance of a conscientious examination. On one occasion, when the number of our Justices of the Peace was reduced considerably, those omitted applied for admission to the bar. These examiners rejected them all and they went into other business and made honest efforts to gain a living. One was a plumber, I remember, and quite a prominent man in his line; but it is certain that had those men been admitted, they would have repaired to the Police Court and become shysters of the worst class.

Louisville has a standing committee and therefore probably does its work better than other parts of the state where the committee acts only for a term of court or the occasion, and the examination is naturally imperfect; though there may be exceptions.

I do not think our system could be made worse, and we are trying hard to improve it; but there seems to be a feeling that

any strictness in examination is inimical to the rights of the individual who is applicant, and it is very difficult to get laws in Kentucky of sufficient stringency to make admission to the bar a thing even of difficulty. I have listened, therefore, with very great interest to what has been said, and all of us will do our best to improve the conditions in our state.

William P. Goodelle, of New York :

At the annual meeting of this Association one year ago, an informal discussion took place between some of the members of this Section as to the advisability of the State Board of Law Examiners forming an organization by themselves, either independent of or under the Association, but nothing was determined upon. I think that before this meeting adjourns, the subject should be considered and disposed of. I am reminded of the advantages which might result from such an organization being formed by the remarks of the gentleman who has just spoken, and I am of the opinion that such an organization would be effective in good results. Such an organization would constitute a central force or power in influencing and causing to be established State Boards of Law Examiners in other states now following the old or in fact, no system, in the examination of students for admission to the Bar. Gentlemen attendant on this Association from Kentucky and Texas who have conversed with me to-day upon the subject, and who are disposed to make the effort in their own state, think that much aid would be given by some such action. The seeds being sown by the conferences of State Boards are certainly taking root and producing results. In illustration permit me to state, that immediately after adjournment of our first day's session at Saratoga last year, after getting back to my hotel, I received the card of a gentleman desiring to see me. In response thereto I was met by the Chief Justice of the highest court of one of the Southern States (whose name I will not mention) who stated that he was present at our session that day and that he was much interested in the work of the State Boards as there disclosed, and that he was ashamed of

his own state and the loose and shabby methods and requirements for admission to the Bar and he wished me to give him more information as to the details of the working of the New York State Board.

I gave him the desired information and promised to send him some of our printed questions used in examinations, which I subsequently did. The result was that some months later I received a letter from the judge, saying that the first examination since he saw me had just been completed; that they had adopted our system and it had received the unqualified approval of both the Bench and Bar of his state, and at the coming session of the Legislature steps would be taken for the formation of a State Board of Law Examiners.

The examinations theretofore taking place, he described in about the same way as the gentleman from Kentucky says they are conducted in his state.

In my judgment, such an organization as I have suggested could be effective in stimulating action and giving aid to other states in the establishment of State Boards, and departing from the old ruts, and adopting approved methods, for the advancement of the standard of admission to the bar.

There is one thing certain, that if we maintain our rightful place among the learned professions, it will only be by assiduous efforts, in all the states, looking to raising and then maintaining that standard, as to legal, moral and educational requirements.

I suggest that before this meeting adjourns, some action should be taken, and that it might be well to submit the matter to a committee, to be appointed, for its consideration, and to report at our next annual meeting.

The Chairman :

Will Dr. Rogers favor us with a statement in regard to Illinois. I understand there has been some controversy there.

Henry Wade Rogers, of Illinois :

I am sorry that no member of our State Board of Law Examiners from Illinois is present. I think we have had a

curious and interesting, and perhaps instructive, experience in Illinois. For a long time we had a very lax system there, but I think that now we have reached a very satisfactory condition. For a number of years the rule governing admission to the bar provided that students who had studied law for two years might take the examination for admission, and that students who have attended a law school having a two year's course of 36 weeks each might be admitted on their diploma. The Supreme Court of Illinois changed the rule and required students to study for three years, and took away the right of admission upon diploma. We have a great many law students in the state of Illinois. There are more than a thousand in Chicago. Unfortunately, we have, I think, at least six,—I don't know but that we have more,—law schools in Chicago. We are not so fortunately situated as Massachusetts, with only two schools for the entire state. The law students felt very much aggrieved at the action of the Supreme Court in changing the rule to three years and in taking away the right of admission upon diploma, and thought that their rights were infringed upon and that the court should have exempted from the rule the students who had commenced to study law under the old rule. They applied to the court to make an exception from the rule in their favor. The court declined to do it. They then appealed to the State Bar Association and to that of Chicago. Both those Associations declined to espouse their cause, and sustained the action of the court. They then went to the Legislature and that body almost unanimously passed an act exempting from the operation of the rule the students who had commenced the study of law before the new rules were announced. The constitutionality of that legislation was assailed. The case was argued in the Supreme Court of the state very fully and very ably on both sides. Mr. Lee, who is here, attacked the constitutionality of the law, acting for the Chicago Bar Association. The Supreme Court held the matter under consideration for some time and finally decided that the act of the legislature was invalid; that the

right to admit to the bar was a judicial question and not a legislative question, and that the rights of the court were infringed by the action of the legislature. I think that the opinion of the court, however, was to the effect that the legislature might establish regulations excluding from the examination certain classes of persons as objectionable, but that it could not dictate to the court and say who should be admitted, or who should be entitled to take the examination. I will not occupy any more time. The question as to the right of the legislature to interfere is a very interesting question, and in Illinois we were very much gratified by the action of our court in taking the position that it did. The question is really not for the legislature but for the court.

After these new rules went into effect the State Board of Law Examiners excluded a large number of candidates who came up for the examination. More recently fewer students have been excluded. I have been anxious to know whether that was because the State Board of Law Examiners had lowered their standards or whether the students who were coming up for the examinations were better prepared. I do not think that the standard of the State Board has been lowered at all, but that the students, finding that our Board was going to be very severe in their examinations, have come more thoroughly prepared.

E. A. Harriman, of Illinois :

Mr. Chairman, it is getting rather late, and before the meeting adjourns I should like to make an announcement that may be of interest to the examiners present. Judge Dewey spoke of the importance of giving questions which would be fair by presenting actual cases on the examination papers for decision by the student. That is done in several, perhaps in many, law schools, and Prof. Wigmore of the Northwestern University Law School has undertaken to compile, so far as he can get them, the problem questions presented in the different law schools of the country. This compilation when published will be very useful to the Boards of Law Examiners, because



it will contain problems which have been actually presented to students in the leading law schools of the country, and will present so many of them that a selection may be made with some certainty that the student has not prepared himself by using the book as a mere quiz book. I mention this because the work has been done by Prof. Wigmore without remuneration and for the benefit of the profession. The book will be published, I believe, some time this fall or winter.

The Chairman :

We have a large representation here from Ohio, and I would be glad to hear from that state.

J. P. Caldwell, of Ohio :

Mr. Chairman : In Ohio we have been recently going through some reforms in the way of methods of examination. Those you care nothing about ; but what we are doing there at present seems to be in the line of the discussion that has taken place—that was suggested, perhaps a year ago. In the State of Ohio now, law students are required to register three years prior to taking an examination. They are to register with the clerk of the Supreme Court of the state. An objection to their admission may be filed at any time prior to their final admission to the bar. The course of study is not prescribed, but the term of study is. The committee is made up of nine members, appointed by the Supreme Court, holding respectively one, two and three years each, three members of the committee being appointed each year, making it a permanent committee. The applicants for admission to the bar are known to the committee by numbers. They are examined upon written examinations, on eighteen subjects, divided up, each member of the committee having two subjects, upon which he prepares eleven questions. The examination consists of three sessions, of three and a half hours each, morning, afternoon and the next morning. Each candidate is handed the paper with such questions as will be asked him during the first session, each subject being separated from the other sub-

jects, and he prepares his answers. If there are five questions asked upon the first subject, he writes the answers to the five questions upon the paper. If more than one sheet is required he pins them together and places his number at the top. He then goes to the next five or six questions, which ever it may be, and does the same thing, writing his answers to those questions. If more than one sheet of paper is required, he pins them together and places his number at the top of the paper, and it is handed to the chairman of the committee. These papers are separated according to subjects and passed to the members of the committee for examination. Our classes are large. We have three examinations in the year, and all admitted to the bar now in Ohio must come before this committee. Formerly they had had committees appointed to visit the law schools in the state and admitted them through a sub-committee. Now applicants all have to come before this committee, regardless of what law school they have attended, whether in Ohio or in any other state. All take just the same examination. A grade of 75 per cent. is required to pass a student. Each question is marked 10 if perfectly answered, 1,000 being the perfect total for 100 questions. Seventy-five per cent., or 750 marks, passes. A less grade than that rejects. We are now also required to file these answers with the clerk of the Supreme Court. That is one of the rules of the Supreme Court, and we file them. Just what action might be taken if there were any objection made, I do not know. But you will readily see that if a man stands at a grade of 70 per cent. and he finds that an examiner has made a mistake of one per cent. it makes no difference to him. If he should have a grade of 74 per cent. and a mistake were made, then the question might arise as to whether this should be reviewed or not. I apprehend that the court would direct, if a mistake had been made that would show that he was entitled to admission, that these papers be gone over by the committee again. I do not know how that might be. But in any case the papers are so filed.

At any time after the student has registered, as I have said, an objection to his character may be filed or made to the clerk of the court, and the board that examines the student has nothing whatever to do with his educational qualifications, unless the Supreme Court directs. Sometimes it may direct, where proper proof is not given of educational qualifications, that the board make an examination with reference to that. It did so when this system was first started. Now I think that there is no such submission made.

The matter of a preliminary education has been asked for here. The court has prescribed, under certain laws of Ohio, under which we have peculiar forms, perhaps, with reference to certain examinations that people may take, but it amounts to a qualification such as would be acquired by a graduate of a high school. That is in substance the necessary qualification in Ohio.

A student must register *in the state* three years before he makes application, unless he has been admitted to the bar in another state.

The Chairman :

I see that Mr. Gregory of Wisconsin is present. We should be glad to hear from Wisconsin on this question.

Charles Noble Gregory, of Wisconsin :

It is getting so late that I will not exceed a few moments. I will only say that as to our law examiners, they examine both orally and in writing; that their examinations have steadily increased in stringency; that during the past year they have examined 136 men and they have passed only 35. That is, about 75 per cent. of those who took the examinations have been rejected, and 25 per cent. have passed. At one examination in April last, 51 were examined and but 6 passed. In addition, they passed 28 men on certification from the schools of other states which, in the judgment of the examiners, were schools of equal standing with the official law school of our state. I will say further that the bar of Wisconsin last winter

approved a bill drafted by a committee of which I was chairman, requiring three years' study, requiring registration at the beginning of the three years, requiring also a high school education, or in the absence of at least a high school diploma, that the applicants for admission to the bar should pass the examination for the freshman class in the State University. That measure, however, met with some opposition and was not offered in the legislature, but has been passed upon and recommended by the state bar and remains for later presentation to the legislature.

David L. Withington, of California :

I would like before adjournment to make a motion, which I think ought to meet with universal favor, that the Committee on Legal Education and Admission to the Bar, of the American Bar Association, be requested to prepare a statement and incorporate it in the report of next year to the Association, so that it could be printed, showing the changes in the requirements for admission to the bar and the improved methods of the different states. I make this motion because I am very much interested in this matter in the state of California, and yet I find the information is scattered over a number of Reports and not in such form that it can be well used. Three or four years ago we put this matter in the hands of the Supreme Court; took away from the Superior Court the power of admitting to the bar. We have a most excellent Supreme Court, but they are very busy and it is hard to keep them up to the standard we desire. What we want to show to the Supreme Court is what has been done in other states. I certainly hope that this action can be taken for I know that it will be of value.

Blewett Lee, of Illinois :

I believe that the Secretary has caused such a compilation to be made, and I should think it could be attached to the report of the committee. There is another compilation made a year ago, and it will be found in a report made to the Illinois State Bar Association, in the proceedings of 1898, which is made to cover the requirements of all the states.

The Secretary :

We collected them all last year, but the Committee on Publication found it would not be practicable to print the laws and the rules already adopted, as it would take too much space.

David L. Withington :

I have not seen the report to the state bar of Illinois, but it would give much greater force if it came from this Association.

The Secretary :

An abstract might be prepared.

Charles Noble Gregory :

Might I suggest that the publication of the report already prepared and brought down to date, be especially requested by this Section.

Simeon E. Baldwin, of Connecticut :

I would like to second the motion just made by the gentleman from California. It seems to me that a summary and short statement such as he suggests would be of more value than the extended statement that has already been made. Very few people will sit down and read through critically the text of thirty or forty different laws or sets of rules, but it will be of service if this Section, or the Committee on Legal Education of the Association states in a few words that during the last twenty years the course of legal study in the law schools of the United States has been raised by legislation, or rule of court, step by step, from a minimum of one year to a minimum of two, from a maximum of three years to a maximum of three or four, and shows also what has been done in the way of preliminary requirements for the study of law,—an entirely new thing since this Association was organized,—and what has been done in regard to the admission of applicants from other states, by rule of court or by statute, namely, that unless they have been in actual practice for a certain length of time and bring proof of that, they must submit to an examination like anybody else. To put in the hands of judges and legislators such a short and summarized statement, occupying four, five or

six pages, would be more valuable than to print the laws in full which the Committee on Publications were unable to have printed. I therefore hope that the motion of the gentleman from California will be adopted.

E. A. Harriman :

I would second the motion for the publication of the summary, and would also state that there is a publication in pamphlet form, I believe, published by the Collector Publishing Company of Detroit, giving the existing rules in all the states.

The Chairman :

The Chair would inquire what the motion is before the body. Is there a formal motion before the Section ?

David L. Withington :

That the Committee on Legal Education and Admission to the Bar of the American Bar Association be requested to prepare and incorporate in their report to the Association next year, a summary statement of the improvement in legal education and the improvement in the methods of admission and the increased requirements for admission to the bar in the different states. I think that substantially covers it.

Blewett Lee :

If I am correctly informed, the material is already at hand and only a summary of it is required, and it may be that the Secretary of the Section could put us in the way of getting that information in time to be printed in the volume of this year's proceedings.

The Chairman :

Do you suggest it in the form of an amendment ?

Blewett Lee :

I offer an amendment that they be requested, at the earliest opportunity, if possible this year, to publish such a summary as suggested by the motion.

David L. Withington :

That is accepted by the mover and seconder of the motion.

The Chairman :

It is moved and seconded that the Committee on Legal Education of the American Bar Association be requested to prepare as soon as possible the summary which has been mentioned by Mr. Withington of California.

The motion was adopted.

William P. Goodelle, of New York :

I move, Mr. Chairman, that there be a committee of five appointed by the chair to take into consideration and report to the next meeting of this Section the advisability of the State Boards of Law Examiners forming themselves into an organization, making such suggestions as they think best ; and that committee I ask that the Chairman appoint at his leisure.

The Chairman :

If I may be allowed the suggestion,—the Secretary agrees with me,—that a committee of three might be more serviceable.

William P. Goodelle :

I will accept the suggestion. I first thought of three.

The motion was seconded and adopted.

The Chairman :

We should be glad to hear from Mr. James of Cincinnati.

Francis B. James, of Ohio :

Reference has been made to the Ohio rule, requiring a registration three years prior to examination. That rule has a local history. The Ohio State Bar Association appointed a committee some years ago to investigate the lawyers who had made false certificates as to the time students had studied. Finding the entire bar of Ohio guilty, they made a report that no lawyer had been guilty of this form of impropriety. When the Supreme Court came to formulate new rules governing admissions to the bar, (which rules went into effect on the first of January, 1898,) they sought to break up this evil by providing that a person who proposed to apply for examination should register the fact at the beginning of his study and that the three years should not count from the date at which he actually commenced, but from the day of registration.

The Chairman :

I would state that Judge Gager of Connecticut is present. We would like to hear from him upon this subject of state bar examinations.

Edwin B. Gager, of Connecticut :

Mr. Chairman, Connecticut is so small a state that there is no necessity of saying very much on the method of admitting to the bar. I might say this, however, that under the system established in our state some eight years ago, a preliminary registration of those who study in the office of an attorney is required to be made with the clerk of the Superior Court in the county where the student is studying, and that the time that is counted for him begins from the time when such certificate was actually filed with the clerk of the Superior Court. We recognize in our state the advantage of preliminary education, or technical school training, by requiring that one who studies only in an office, if not a college graduate or a graduate of a law school, must study for three years. A student is not allowed to study by himself under the present rule. If he is a law school graduate, or a graduate of a college, he is admitted to the examination after two year's study. On the question of moral character, we reverse the operation as presented under the Maryland system, and before a student is admitted to the examination, his name is presented, published, distributed to the lawyers throughout the county and acted upon at a meeting of the county bar, where he is approved or disapproved as to his moral qualifications,—approved, of course, almost universally. So that the bar of the county first passes upon moral qualifications. The question comes before that association on a proper certificate of age and of moral character. Then, that having been passed upon, the clerk transmits up to the Board of Examiners the certificates that have been filed with the action of the bar thereon. Then the student files with the Board of Examiners his certificate as to the term of study, stating always with whom he has studied, and if a law school graduate, of course specifying the school



and furnishing the proper certificates. Then the Board checks up the term of study as certified by him, by the report of the clerk of the county where he has studied, if in an office, to see that it corresponds with the time that he accounts for upon his presentation of credentials. We require for the examination three three-hour sessions, and we have ten or eleven papers, somewhat miscellaneously divided, some papers shortened to half an hour, and one paper, a contract paper, as we call it, a three-hour, full session paper. Of course they are all reduced to a common standard when we come to mark them to make up the pass marks. As to the method of questioning, we follow a combination of plans. We have all sorts of students before us, they have all sorts of mental characteristics and they have all sorts of training. Now, examining them in a body, the only fair way is to provide such a class, or such classes, of questions that you can fairly give them all a reasonable opportunity to develop to a reasonable degree what they have learned, whether they have learned it by one method or by another. So that we have a combination, a set question to be discussed at length by them, and a few definitions, but more discussion and application of the principles. The one rigid rule that we adopt is never to put a question that can be answered by yes or no, and that is about the only rigid rule that we adopt in preparing the questions. One set of papers may have a preponderance of cases, another, of more general questions such as could be based upon their work in a text book. But we say this,—the committee under the rule of the court has recommended certain subjects and certain text books. Now, the questions must be such as a young man under twenty-five, after two or three years reasonable study of these books, ought reasonably to be expected to answer, and so the questions must be prepared with that idea in view; and we do not believe very much in the theory of putting questions that would test the wisdom of our Supreme Court practitioners. We do not think that is quite fair for the boys; in other words, you must recognize the actual situation of the student,

his opportunities and what he may be fairly expected to answer. I think that is all that need be said as to our system. It is quite like the Maryland system, except to reverse the order of the determination of moral qualifications, and we have not reduced the weight of questions quite to the scientific point that they have in Maryland. In time we may get to it. At the last meeting of the Board we did vote, where it was a fairly open question, perhaps, as to the standing of the student, that the paper on contracts should be given special attention. That is, by the paper on contracts, I mean a paper based substantially on such a book as Parsons on Contracts. That is the theory upon which it is got up, the practical working theory, not of course strictly logical, but a three-hour paper, and one that covers those things in the line of contract that every young student must expect to meet almost from the first, when he opens an office. We devote, as I say, three hours to that subject, one hour to real property, one hour to evidence, about forty minutes to torts, and about an hour to equity, and then less time on some of the other subjects; so that, all told, with ten or eleven subjects, we have nine hours, in three sessions.

Benjamin A. Richmond, of Maryland:

Does your preliminary objection, or what Judge Sharp calls the order *nisi*, with reference to the qualifications of the student, apply as to his moral character?

Edwin B. Gager:

Certainly. A student who intends to apply for examination is required, some three or four weeks before the examination, to notify the clerk of the Superior Court in the county where he has studied. The clerk prints upon postal cards the names of all those who have applied for admission from that county. Those are circulated among all the lawyers of that county, one being sent to each member of the county bar, with notice that upon a certain day a bar meeting will be held to consider the moral qualifications of these applicants and to vote upon

their admission to the examination ; and the matter comes up, and is, in practice, in our county at least, referred to a standing committee of the bar, who take up the list and go over the names, and every one has the liberty and is invited to present any reason, if he has any, why the applicant should not go up for examination. There is the most abundant opportunity, just as in your state, but it is at the other end of the line. The action of the county bar is final as to moral qualification.

Benjamin A. Richmond :

I like your system the best.

The Chairman :

I would ask Mr. Mechem, of Michigan, to make a brief statement in regard to the practice there.

Edwin B. Gager, of Connecticut, was then called to the Chair.

Floyd R. Mechem, of Michigan :

The only point that strikes me as significant is that we devote at least twice the amount of time that seems to be customary in other states. We usually have an examination of at least three days. Our statute require that the examination should be both in writing and oral. We usually give two days or so to the written examination and about half a day to the oral examination. We put questions upon about 25 subjects, never less than five questions and rarely more than ten. We have two sessions each day, of about three and a half to four hours each ; about seven or eight hours a day. We require, in regard to moral character, the affidavit of the preceptors and the certificate of the circuit judge. Our statute admits without examination the graduates of the two law schools in the state, one, the state institution at Ann Arbor, and the other a private school in Detroit, so that we have had a very small number of applicants. During the four years that the law has been in operation, we have had but 130 applicants. We

are therefore not troubled by the large numbers that prevail in the other states.

On motion the meeting adjourned until Wednesday, August 30, at 4 P. M.

WEDNESDAY.

*August 30, 1899, 4 o'clock P. M.*

The Chairman :

We have thought it better to begin at once this afternoon with the reading of the papers which will be presented by the gentlemen named on the programme, and I take great pleasure in introducing to the Section, Mr. Joseph Walton, Q. C., of London, who will read us a paper.

Mr. Walton then read his paper.

*(See the Paper at the end of these Minutes).*

The Chairman :

I am sure we have all listened with great interest and pleasure to the very charming paper just read. The next paper is by Mr. Thomas Barclay, of Paris, but on account of the absence of Mr. Barclay, Judge Raikes, of England, has kindly consented to read the paper. I have great pleasure in introducing Judge Raikes.

Judge Raikes then read Mr. Barclay's paper.

*(See the Paper at the end of these Minutes).*

The Chairman :

On behalf of the Section I beg leave to thank Judge Raikes for reading this very instructive paper.

The Chair will announce at this time the committee which has been appointed on the resolution adopted yesterday to consider and report upon the question of associated action on

the part of State Examiners for admission to the bar in connection with this Section. The committee will be :

F. M. Danaher, of New York, Henry S. Dewey, of Massachusetts, and Frank F. Oldham, of Ohio, who I may state are all members of respective Boards of State Examiners for admission to the bar.

Henry Wade Rogers, of Illinois :

I desire to offer the following resolution :

*Resolved*, That a committee of three be appointed to take into consideration what action, if any, shall be taken to bring the reputable law schools of the country into closer relations with each other and with the Section of Legal Education, and that this committee have power to invite such law schools to meet in conference with the Section next year.

E. W. Huffcut, of New York :

I second that resolution.

The resolution was adopted :

Henry Wade Rogers :

I am instructed by the committee appointed to nominate officers, to make the following report.

The majority of the committee recommend that Charles Noble Gregory, of Wisconsin, be elected Chairman for the ensuing year. Mr. Gregory is the dissenting member of the committee.

It has been customary for us to re-elect from year to year our Secretary, and, in accordance with that custom, the committee unanimously recommends the re-election of Judge Sharp as Secretary for the ensuing year.

Emlin McClain :

I move that the Chairman be instructed to cast the ballot of the Section for the officers that have been nominated.

The motion was seconded and carried, and the Chairman cast the ballot of the Section for the gentlemen named, and they were declared duly elected.

The Chairman :

Before adjourning, the Chair would announce the committee under the resolution of Dr. Rogers, just adopted, in regard to a conference of law school professors. The committee will consist of Henry Wade Rogers, of Illinois; John C. Gray, of Massachusetts; George M. Sharp, of Maryland.

On motion, the Section adjourned *sine die*.

GEORGE M. SHARP,  
*Secretary.*

ADDRESS  
OF  
WILLIAM WIRT HOWE,  
OF NEW ORLEANS,  
AS CHAIRMAN OF THE SECTION OF LEGAL EDUCATION.

It is customary for the Chairman of this Section, in opening the annual exercises, to make an address on some topic that may possibly be helpful or suggestive concerning the important work of legal education. My distinguished predecessors in this office have said so many things in this direction, and said them so well, that the appointed task becomes more difficult every year.

I do not claim to be a regular professor of law, but I have lectured in several of our universities on special legal topics, and have always tried to keep in touch with law schools and law students, with whose problems and efforts we must all feel much sympathy, and the more I have to do with these matters the more I am impressed with the importance of The Study of Comparative Jurisprudence, concerning which, as to its uses and methods, I would like to say something to-day.

Let no one be alarmed by the phrase "Comparative Jurisprudence." What I propose to say is intended to be very practical. We do not wish to educate such scholars as the English judge had in mind when in a moment of impatience he defined a jurist as "a person who knows a little about the law of every country except his own." We will rather agree with Professor Ortolan of the Faculty of Law of Paris when he said to his pupils in his lectures on Roman Legislation, that, above all, "it is necessary to be of one's own time and one's country." That is an absolute condition of useful professional life.

A law student might take warning from the case of the philosopher who was so busy in gazing up at the stars above his

head that he fell into a pit at his feet. If the lawyer should do this in the professional way, the case might be even more sad than that of the philosopher, for his unhappy client might also fall into a "hole" in which the doctrine of estoppel might keep him forever.

But while we do not wish to produce the kind of jurists who were ridiculed in the sprightly epigram I have quoted, we may yet aspire to educate another kind. The true jurist is a person who knows the law of his own country, not only because he has qualified himself to state and apply it with some precision, but because he knows its origin, its history, and its development. In other words, he has not only studied his profession as a very useful art, but as a very noble science.

And we may say of law that it is a science which has been developed from archaic times by a very slow but a distinctly continuous growth, so that it is pre-eminently true of it that "the roots of its present lie deep in the past," and nothing in its past is dead or unimportant "to the man who would know how the present came to be what it is." We need not undervalue the labors of the analytical jurists, which are very useful, and of which we must always avail ourselves; but the fact remains that the historical method is still indispensable, and more and more so, as modern research is extended into the origin of all kinds of things.

Professor Paulsen, of Berlin has well said that "law is not an invention of jurists and legislators; it grows with the social life of the people as the external form of their union. Originally it is a custom. Then at a certain stage of development it is separated from the collection of universally obligatory forms of life and action and becomes a separate field of social compulsion. From that stage on it becomes, it is true, an object of conscious consideration; by the side of unwritten law written law arises, so that at last in the great collections or codifications law looks like an artificial product. Whoever considers the subject historically, however, will easily observe that the body of the law, the legal system as a whole, is not made. All that



is done in such cases is essentially this—what is current and traditional is systematically incorporated. Occasional slight adaptations to the changing life conditions of the people are made. We may say of the legal codes, what we say of the State Constitutions, which are indeed but a part of the general code of laws—"they are not made—they grow."

Primitive people did not meet in convention and say: "Go to—let us make a constitution, a civil code and a code of practice." Such things may be said to-day sometimes in communities which have behind them hundreds or thousands of years of legal experience. But even then, they can make very little that is new, but generally rearrange or adapt what is immemorially old, and if we wish to understand their work fully, we must study the sources.

It seems plain that to comprehend any institution we must apprehend its historical development. It may have undergone curious changes, as the words of a language change, while the roots remain and reward a diligent search.

Indeed, as a matter of *psychology*, the only way to perceive an object clearly is to compare it with something else, and so note the resemblances and its differences. We shall thoroughly understand our own institutions only by comparing them with those of other peoples, and then perceive why they have become one thing in Spain, for example, another in Germany, another in England.

And, jurisprudence being a science as well as an art, the wider and more exact the science, the finer and more precise will be the art. Emerson has said in his Delphic way that "he that will do anything well must come to it from a higher ground," meaning, presumably, that it is from the lofty plane of thorough culture that we may most easily view our work and most successfully lay it out and perform it.

Sir William Markby in his treatise on the Elements of Law, points out that most of the law of England (and we might add of America) has grown up entirely outside of the councils of sovereigns and the deliberations of the legislature, and is

mostly to be found in the law reports and a few leading treatises. This judge-made law consists of certain principles expressed for the most part in technical terms. These terms are the common property of what we call the Western nations of Europe, and of their descendants scattered throughout the world. They have spread into strange countries. The French Civil Code for example has been resorted to in Russia, Turkey and Japan as a fountain of principles. Almost every topic dealt with by Sir William Markby has, as he states, been discussed by the lawyers of every country in Europe. "Hence," he remarks, "we seek in the law and literature of other countries enlightenment as to the law of our own, and with this aid we endeavor to acquire and to express our legal principles and to define accurately our technical terms. This it is which, as I can conceive, elevates law into a science."

Of course you may make good working practitioners without any such enlightenment. Lord Campbell tells of a prominent chancery barrister who being told that Chancellor D'Aguesseau had expressed certain views on an important question replied:

"But do you think the Chancellor in that matter took the opinion of his Master of the Rolls?"

As if, indeed, it was of the essence of things that the French Chancellor should also have a Master of the Rolls.

Of course you may make such barristers as that without any study of Comparative Jurisprudence: but it may be safely asserted that our greatest lawyers, such as Hale, Mansfield and Kent have been eager students of legal history and diligent to trace the origin of principles to their highest sources. The biographer of Hale tells us expressly that, strange as it may appear to some, he was a devoted student of the Civil Law. We all know the wide range of the studies of Lord Mansfield and how they illuminated his opinions. In *Moses vs. Macfarlane*, to cite only one example, (2 Burrows 1005) speaking of the right to recover money paid in error, he said that if the defendant be under an obligation from the ties of natural justice to refund, the law implies a debt, and gives the action

of *indebitatus assumpsit*, founded on the equity of the plaintiff's case, as it were upon a contract, *quasi ex contractu*, as the Roman law expressed it—thus suddenly turning a sort of searchlight on a subject which has been so often darkened by inept discussion.

And as for our own Kent, we have only to read his Commentaries as they deserve to be read, to see how wide and fruitful had been his studies in these directions, and how far superior his work is to that of the ordinary text-book writer.

It is not alone judges and commentators who need this wide range of culture in their profession. The members of the bar need it for their own protection. As pointed out by Savigny in one of his volumes, the study of law is of its very nature exposed to a double danger, that of soaring through mere theory of the *a priori* kind into empty abstractions, and that of sinking through practice into a soulless, unsatisfying handicraft. He recommends as a remedy such studies as we are now considering, which will at once plant us on the ground of an actual historical reality and at the same time lift our profession above the level of a mere trade.

And perhaps the study of Comparative Jurisprudence may teach us a lesson that is always useful, namely, the lesson of modesty. No doubt we are a great people; and we are not likely to forget the fact so long as we remind each other of it every morning in the newspapers. No doubt we have made many inventions, of which we have not been slow to boast. But, as in the realm of mechanical invention, our most important have necessarily been simply applications of the results of scientific investigation and discovery in the Old World for many centuries, so in matters of law, whether organic or otherwise, every important principle when carefully considered will proclaim its pedigree and its long descent. And so, instead of talking about our constitutions and codes as "indigenous" and "unique" products of our own "native genius," it might be well to study them as geologists study their strata. So doing, we might find some very interesting facts. We should

find, for example, that in Rome in the time of the Gracchi there was an organic law which provided that a statute must not contain more than one object, thus seeking to prevent omnibus legislation, and that the Senate declared certain laws of Drusus to be invalid as violating this organic provision, or "*jus legum*." We should find that the idea of declaring an act of legislation unauthorized and therefore null, was known in Italy and France in the sixteenth and seventeenth centuries, and in England prior to the Revolution of 1688, and in our own colonies prior to 1787. We should find, as a further example, that what is known as Code Procedure in New York was not invented in 1848 by Mr. David Dudley Field (who, so far as I know, never claimed to have invented it), but was simply adapted by that very learned and able lawyer from the Code of Practice of Louisiana of 1825, which in turn was derived from French and Spanish sources, and they in turn from the Roman Procedure of the time of Justinian; when, as you are aware, there was one civil action of a flexible character, whether legal or equitable, and the pleadings were a petition or libel of the plaintiff, and an exception or an answer by the defendant. We might further find that a community of acquisitions and gains between married people somewhat like that of California, was known in ancient Egypt; that mutual Marine Insurance was known in Babylon in the first century of our era, and that the leading rules of *Res Adjudicata* were laid down with a wealth of illustration by the Antonine jurists. Without multiplying such illustrations, which might be made very numerous, it may at least be said that such investigations may make the American student a little modest in his claims as to the nativity of many a leading doctrine or rule of our profession, and at least somewhat disposed to concede that in jurisprudence, as in other departments of science, we will do well to avail ourselves of the experience and learning of the Old World, or indeed of any other part of the world.

And coming down still more closely to the practical uses of legal history and comparative study, the events of the last

year have greatly emphasized their value. We find ourselves confronted with new problems. Puerto Rico, Cuba and the Philippines contain some twelve millions of people whom we control, more or less, and whose laws and jurisprudence we must, to some extent, at least, understand. To understand them even fairly, we must go back at least to the Roman law, trace its principles through the early history of the Spanish Peninsula, note the influence of the Teutonic institutions as introduced by the Visigoths, study the general doctrines of the *Siete Partidas* and then take up the present codes of Spain, whether of general law, of commerce or of procedure, which have been extended to these hundreds of islands during the last ten years. It will hardly be denied that such studies may have an immediate and practical value for the American student.

And as our possessions extend and commerce and travel increase, the necessity of education in our law schools in legal history and comparative jurisprudence, including comparative administration, becomes more and more apparent. The time is at hand when we are to be brought in competition, the world over, with the highly trained consular and diplomatic agents of England, France, Germany and the other leading nations. They are carefully educated and thoroughly equipped. If we are to compete with such men, or, leaving out the idea of competition entirely, if we are to be worthily represented in these matters, we must see to it that our young men are prepared for the work.

It may not be amiss to note that a school of comparative jurisprudence and diplomacy intended to educate students on these lines, has been established during the last year in the Columbian University, at Washington, D. C., and that the work is going on there with results that promise to be important.

And looking a little nearer home, we may see, perhaps chiefly in our western and southwestern states, indications that grave questions are soon to be decided as to the proper line, for example, to be drawn between judicial power on the one

hand and administrative power on the other. Such questions arose in the Roman Empire, and have been keenly discussed in the modern nations of Europe. They concern the organic life of the nation. If we are to solve them successfully we need all the help and all the light we can obtain from legal history.

And summing up the uses of such studies, we might refer to the enormous increase of reports and digests in America, whereby what we call our jurisprudence is fast assuming the character of a labyrinth. We need a clue to this vast intricacy. We may find it in the studies we are considering.

As for methods of study of comparative jurisprudence, it would seem that in the first place the student should have a general knowledge of history. He might add to this, if possible, some knowledge of ethnology and primitive culture. Coming down then to an actual and limited course which might be within the range of possibility in one of our law schools, it would seem that the ancient saying of Gaius that all jurisprudence concerns persons, things, and actions, might be useful as a guide. There are persons natural or artificial, who may have rights in or concerning things; there are things or property corporeal or incorporeal in or concerning which such rights may exist, and finally there are actions, whereby such rights may be enforced or defended by some kind of procedure either criminal or civil. In tracing the development of the law of persons, the law of property and the law of procedure, it would be convenient to eliminate much that might be interesting to the student of general sociology. We may leave out of view that very early time when, as some writers suppose, mankind existed in mere hordes, and come down at least to a period when the germs of some kind of social organization appear. We may further eliminate, by confining ourselves to the two great races with whom we are so intimately connected, namely, the Aryan or Indo-European, or Indo-Germanic so-called, on the one hand, and the Semitic on the other. We are descended, —or most of us,—from what are called the Aryan people.

But at the same time in matters of religion, morals and law we are connected with the Semitic people by many ties, and some of their religious books have been woven into the very fabric of our social life. And while we may recognize certain difference of temperament and ideals between these two races, yet many of their primitive customs seem to have been much alike, or to have become so;—and when they came to settle down around the eastern end of the Mediterranean, and to be brought in contact with each other, sometimes in war and piracy, sometimes in trade and commerce of a peaceful and fruitful kind, no doubt their customs exercised a mutual influence, and each race learned much from the other in matters of religion and law, which at first were hardly separated, as well as in art and letters.

In studying the law of persons we might begin with the Family, as the unit, and note the resemblances which have been discovered in this primitive institution whether in India, Persia, Egypt, Palestine, Greece, Rome, Germany, Gaul, Iberia, Britain or Ireland; the influence on legal conceptions of the worship of ancestors around the sacred fire; the theories of marriage; the position of the House Father as priest and ruler,—the governing head or managing director of a quasi-corporation; the advisory family council; the theory of kinship; and the rules of adoption by which the agnatic line might be preserved for the celebration of its religious rites and the administration of its secular affairs.

We might then trace the expansion of the family into the Gens; the formation of the village community; the regimentation into tribes; the final establishment of the Ancient City and the various personal relations resulting from such development.

Taking up the law of Things or Property, the same general course might be traced; noting the archaic conceptions on this subject, the character of the property of the Family, of the Gens, of the Community and of the City; the growth of rules in regard to individual property, and in regard to succession

whether intestate or testamentary; the development of the law of obligations whether arising from contract or tort, and the law of sale, pledge and mortgage, as contractual relations became more numerous and manifest.

Coming then to Procedure we might trace its development from primitive times:—the blood feud; the compensation by money for injuries; the arbitration before the elders; the technical actions before a magistrate, whether by wager or other device; the growth of the formulary procedure; the employment of referees and jurors; and finally the practice which underlies all our methods of pleading, namely, the written petition or complaint of a plaintiff, and the exception or answer of the defendant.

Such a course would necessarily be very elementary, but it should include a brief statement at least of the rules upon these subjects in India, Egypt, Palestine and Greece, so far as they can be formulated with some precision. In this way the student might be brought down in the natural order of time to a study of the elements of Roman Law, which to a greater or less extent underlie the jurisprudence of all modern civilized nations.

It would seem that the disfavor with which the study of Roman law has sometimes been met, of late years, in some of our law schools, has resulted from the very uninteresting manner in which it has been presented. Some treatises on the subject are so abstract and dull as to repel the student. Some devote too much time and space to Roman politics and political history, in regard to which many theories have been devised after the manner in which the German metaphysician, who had never seen a camel, evolved one from his own consciousness—theories in regard to which it has been said that they have the singular advantage of having been entirely unknown to the Romans themselves. In the limited course which we are now considering, what the student needs, primarily, after a brief historical introduction, is a knowledge of those leading principles of Roman law, whether substantive or



adjective, which are found in the writings of the classical jurists; to be followed by a general survey of the situation as it existed in the sixth century. He would then be able to take up the question of the development of law in mediæval Europe: how far Roman law has survived or was received, or to what extent it exercised some influence, in Greece, Italy, Germany, France, Spain, Scotland, England, and, eventually, in America.

And this in turn would bring the student to a comparative study of modern codes,—that is to say—codes of law, not merely of practice. These codes embrace a wide period of development. A civil code was adopted in Sweden, in 1734; in Prussia, in 1794; in France, in 1804; in Austria, in 1810; in the Swiss Canton of Vand, in 1821; in Sardinia and Holland, in 1838; in Saxony, in 1863: in Italy, in 1865; in Spain and her colonies, in 1899; in Germany, for the existing Empire, in 1896, to take effect in 1900.

Notice should also be taken in such a course of the various codes of commerce, such as those of France and Spain, and of the various codes of procedure. They all reflect light upon the subject, and as a rule exhibit a steady progress of doctrine which is but natural when we remember that the compilers are free to avail themselves of the labors of those who have preceded them in the work of codification, whether in their own or in foreign countries. Thus it is conceded by a recent French writer that the Spanish Civil Code of 1889 is a noble work, and in some respects more scientific than the Code Napoleon; and we may believe the new German Code to be in some respects superior to either.

The general plan of study thus indicated will of course be quite elementary. What is most needed is that the teacher should suggest and stimulate; delineating those large outlines which the apt student will fill up by collateral reading for himself, if he can be inspired with some enthusiasm for the work. It is a noble and fruitful work, which I commend to the kind consideration of this Section.



# LEGAL EDUCATION IN CANADA.

BY

N. W. HOYLES,

OF TORONTO, CANADA.

An English Poet Laureate has told us that : “ The thoughts of men are widened with the process of the suns.”

This is evidenced by the intelligent and widespread interest taken in our day by all inquiring minds in manifold questions and matters extraneous to those with which they are immediately concerned.

This spirit of mental activity and research, which has led to an examination and comparison of facts, principles and methods in all other sciences, pervades no less the science of law. There is no science in which it may be more worthily displayed.

I can conceive of no conference as to secular matters, with higher or better aims than one which has to do with a dissemination of the knowledge of those laws, customs and rights of men in a state or community which are necessary for the due administration of justice, either national or international.

This is equally true of general jurisprudence, the science or philosophy of positive law, as it is of particular jurisprudence, the knowledge of the law of a particular state or nation.

And, if I may use that generic term again, it is true also of comparative jurisprudence, and of the various phases of legal education, in the study of which lawyers are of necessity induced to examine the legal systems of countries other than their own, and the methods there pursued in the training of members of their own profession.

I venture to preface what I have to say on the subject of legal education in Canada, by a few facts, of which I do not presume that my hearers are ignorant, but for the purpose of

showing, from the close relationship between the United States and Canada, that the subject of my paper is one not merely of academic, but also of practical, interest for a gathering such as this.

We are separated from each other by a line which, at many points, is an imaginary one only, and are knit together by many ties, racial, social and commercial.

The Dominion of Canada, extending about 3,500 miles from East to West, and 1,400 miles from North to South, comprises the whole of the northern half of North America, with the exception, on the west, of Alaska, and on the east, of Labrador, which latter is under the jurisdiction of Newfoundland.

It consists of the following constituent parts, Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, and the Northwest Territories.

The latest figures obtainable by me, show the annual imports from the United State into Canada to be worth about \$61,000,000, and the exports from Canada to the United States to be worth over \$40,000,000.

The number of Canadians residing in the United States is about one million.

As a result of this proximity and intercourse, cases affecting the property and rights, and sometimes even the liberty and life, of citizens of the United States, are constantly coming up for decision before Canadian courts.

Under our federal system of Government, which an eminent authority has termed "a monarchical federation," the central or Dominion Parliament has exclusive legislative jurisdiction in matters of common concern to the whole country, including that of criminal law and procedure; while the local or Provincial legislatures have jurisdiction over matters of purely local interest, including those relating to property and civil rights. The Provincial authorities have thus supreme control in the matter of Legal Education.

The English Criminal Law, modified by Provincial statutes, which, at the time of Confederation (1867), was in force in all the Provinces, has since been superseded to a large extent by the Criminal Code of 1892, a most beneficial enactment, by which the technicalities and sophistries of the English Criminal Law have been either greatly modified or entirely swept away.

We are in this respect in advance of the Mother Country whose criminal judicature was the prototype of our own; and it can no longer be said of our system, as it was recently said of hers by an English Judge, that "our law unfortunately, instead of being in the form of a code, is a thing of shreds and patches."

With the exception of the Province of Quebec, the English Common Law which has been described by one writer as "the most legal system of law in the world," is the basis of the civil Jurisprudence of all the Provinces, modified, of course, very materially by their own legislation.

The law of the Province of Quebec affecting property and civil rights, differs, as in fact it always has differed, very materially from that of the rest of the Dominion. It has been one of the peculiar institutions of our French compatriots, and coupled with their language, which it has helped to perpetuate and strengthen, has given the ancient Province a unique and distinctive place in our federal system of Government.

At the time of the conquest of Canada by Great Britain, the Coutume de Paris, reinforced, where silent (*e. g.* in regard to obligations and servitudes) by the common law of France, and by the ordinances of the local Governors, was the law in force.

By the Proclamation of George III, of 7th October, 1863, by which the Government of Quebec was constituted, embracing the present Province of Quebec, and the Eastern part of Ontario, it was declared that the people were to have the "enjoyment of the benefit of the laws of England," and the courts were to decide "all causes according to law and equity, and, as nearly as may be, agreeable to the laws of England."

By the Quebec Act of 1774, the English conquerors restored their old law to the present Province of Quebec and this remained the law of the "New Subjects" of the British Crown, until the enactment of the Code Civile of 1865.

This code was largely based upon the Code Napoleon, which, in turn was mainly derived from the Roman Law, Pothier's treatise contributing materially to it, and to the Canadian codification.

It is not surprising, therefore, to find that the study of Roman Law forms an important part of the necessary course for all students of the law in the Province of Quebec; that it is in fact a *sine qua non* for admission to practice at the Bar of that Province, and that it is also an indispensable part of courses of university education in the faculty of law in all the Provinces of Canada, in which universities have been established.

Although not strictly within the purview of this paper, a brief reference may be made to legal education as represented by the Canadian Universities.

There is a law course in nearly every one of these institutions. The curriculum of subjects is extensive and varied, and the standard of examination is high.

The course for the degree of LL. B., or B. C. L., is usually four years, after the matriculation or entrance examination has been passed; but when a candidate has graduated in arts, the period is shortened to two years in some of the universities, while in others a special examination is set the candidate as a test for his being admitted to a degree.

What is known in several of the universities,—notably in Toronto, Queen's and Trinity—as the Political Science Department, is intended to afford a means of preparation for the profession of law, the ministry, journalism and teaching; and the law schools are recruited, to a considerable extent, from graduates of the universities who have taken the work of that department.

This is true at least of the school with which I have the honor to be connected, about one half of the students being university graduates, many of whom have been trained in the political science subjects before entering the school.

The political science course embraces an excellent ground work in general and Constitutional History, Political Economy, Public International Law, Jurisprudence, Philosophy, Public Finance, Colonial and Federal Constitutional Law including the constitution and Government of the United States, the history of English and Roman Law, etc.

And, in one of these universities, that of Toronto—which is a State endorsed institution—these subjects are taught and are examined upon, in addition to Roman Law, Medical Jurisprudence, Domestic Relations, Private International Law, etc., as well as the law subjects proper, which are utilized in the lawyer's active practice of his profession.

The University of Toronto, moreover accepts the examinations of the Osgoode Hall Law School in certain subjects, as equivalent to its own examinations in the same subjects, and admits graduates of that school to a degree in law upon passing in two annual examinations, in the other subjects of the University curriculum.

The limits of this paper will not permit an enlargement of this topic.

The State University, although more pronounced in the Department of Political Science, is fairly representative of the good work which is being done by other higher schools of learning in Canada along the same line.

The beneficial results of this co-operation in legal education between the university and the law-school are already being manifested.

The combination of a liberal academic or collegiate training with the sterner and more practical studies of the school, cannot fail to produce better read and more accomplished lawyers, and to raise appreciably the standing and increase the usefulness of the legal profession in Canada. Indeed we should

expect that this would be the outcome of such a combination in any country where law schools are established.

One distinguishing feature of the legal profession in Canada, as compared with that of England, consists in the fact that there is no recognized division or distinction between barristers and solicitors; the education for both is the same. It is possible, of course, for a man to be the one without being the other, but, in practice I think this never happens now, in Ontario, at any rate.

In all the Provinces the legislatures have incorporated the members of the legal profession as a society empowered to make rules and regulations governing, among other matters, the admission, qualification, and education of barristers and attorneys or solicitors, and has enacted that only persons admitted to membership in such society are entitled to practice law.

Legal education therefore is uniformly entrusted throughout Canada to the legal profession itself, through its governing body in each of the Provinces.

The literary qualifications required in all the Provinces as a condition precedent to entrance upon the study of the law are:

- (1) A degree in arts or law in any university in Her Majesty's Dominion, empowered to grant such a degree, or
- (2) Matriculation in some university, or
- (3) The passing of a prescribed examination of a standard approximate to matriculation.

In the Province of Ontario matriculation in some university in the Province is the minimum required of the candidate for admission.

These requirements secure that the candidate shall have a fair knowledge of English, Latin, Mathematics, and French, while in some cases a knowledge of either Greek or German is an additional requisite.

In all the Provinces, students are obliged, before admission to practice, to spend some years as articled clerks in a solicitor's office—four or five years in the case of an ordinary clerk, and



three years in the case of a graduate—in order to acquire proficiency in practical work, and a knowledge of procedure which can be gained only in this way.

But at Dalhousie University in Nova Scotia, where there is a law school in full operation as part of the general scheme of university work, the faculty urgently recommend that students devote their whole time during session to the work of the school, experience having proved that students who undertake office work in addition to the work of their classes, receive comparatively little advantage from the lectures, and candidates for the degree of LL. B. are not required to attend lectures or take the examination in practice and procedure.

The advantages of a University education in either arts or law, receive practical recognition in all the Provinces by a shortening of the term of service between the periods of admission to study and qualification to practice law. The term of service, under articles, is generally shortened by two years but in some of the Provinces one year only is allowed. In Quebec this privilege of shorter service is limited to graduates in the faculty of law, while in Prince Edward Island on the other hand a degree in law is not recognized in this connection.

I have set out in the following table the number of students in the different Provinces, with the length of service under articles in the case of graduates and non-graduates:

	STUDENTS.	YEARS SERVICE UNDER ARTICLES.		
		B.A.	LL.B.	Non- graduates.
British Columbia, . . . . .	56	3	3	5
Manitoba, . . . . .	53	3	3	5
New Brunswick, . . . . .	30	3	3	4
Nova Scotia, . . . . .	45	3	3	4
North West Territories, . . . . .	*	3	3	5
Ontario, . . . . .	300	3	3	5
Prince Edward Island, . . . . .	18	4	5	5
Quebec, . . . . .	250	4	3	4

\* This number cannot be given owing to the recent formation of the Law Society of North West Territories.

In British Columbia, Manitoba, the North West Territories, and Prince Edward Island, there are no law schools, nor is any systematic provision made in these Provinces or Territories, for the education of students, who therefore have to rely upon their own private reading for this purpose.

In Manitoba, members of the bar give occasional lectures during the winter months to the Law Students' Society.

In Prince Edward Island, one of the judges of the Supreme Court has, annually, for several years past, delivered a course of very valuable lectures upon the various branches of the law, which are invariably taken advantage of by the students.

In the other Provinces, much better provision is made for legal education.

There are law schools in New Brunswick, Nova Scotia and Quebec, which are doing good work.

That of New Brunswick is an adjunct of the University of King's College, Windsor, Nova Scotia.

In Nova Scotia, there is the law school of Dalhousie University, and in Quebec there are Faculties of Law in McGill and Laval Universities, which serve all the purposes of separate schools.

In McGill, there are eight professors and three lecturers. Only one of these, the Dean of the Faculty of Law, gives his whole time to the work of the school.

The course extends over three years of seven months each.

In Laval, there are thirteen professors. The course lasts for three years of nine months each.

In King's College, there are twelve professors and instructors, none of whom give their whole time to the work. The duration of the course is three years of seven months each.

In Dalhousie, there are two professors and five lecturers, of whom only the Dean gives his whole time to the work. The course is one of three years of five months each.

Many eminent members of the bars of the respective Provinces are to be found among the instructors at these institutions.

The subjects of instruction at Dalhousie and King's, are the ordinary branches of English law, with the addition in the latter of Roman law.

International law is taught in both. In Dalhousie, but not in King's, the Conflict of Laws forms part also of the course.

In McGill, great attention is paid to the subject of Roman law; one hundred and fifteen lectures are given on this subject to the first year students.

In Laval, two hundred and ten lectures in Roman law are given to students of the first year, the study of Roman law being, apparently, the main employment during the first year at this University.

In all the law schools in Canada, the method of instruction is by lectures, with frequent reference to and comment upon cases, combined with oral discussions from time to time.

In none of them has the Langdell or case system been adopted.

Attendance at these respective schools is not obligatory, and a degree in law of any of them is not accepted as sufficient for admission to practice, with the exception of Nova Scotia, where the Bar Society admits to practice without examination all who hold the degree of LL.B. of Dalhousie. In this Province nearly all students of law take this LL.B. course.

The Province of Ontario occupies a unique position in regard to legal education. It has one law school at Osgoode Hall, Toronto, which is the only avenue for admission to the practice of the law. This school was established on its present basis by the Law Society of Upper Canada in 1889, under the provisions of rules passed by the Society in the exercise of its statutory powers. It is conducted under the immediate supervision of the Legal Education Committee of the Society, subject to the control of the Benchers of the Society in convocation assembled. Its purpose is to secure, as far as possible, the possession of a thorough legal education, by all those who enter upon the practice of the legal profession in the Province. To this end, attendance at the school during three

terms or sessions, is made compulsory upon all who desire to be admitted to the practice of the law.

The course in the school is a three years' course, the term consisting of seven months, commencing in the latter part of September and ending in the latter part of the month of April following.

In each year two examinations have to be passed, one at Christmas, and the other in May following.

The staff of the school consists of the principal, whose whole time is given to the work, and four paid lecturers, members of the Bar in active practice (three of them being Queen's Counsel), who have, from an experience of many years in this work, become very familiar with their subjects, and with the art of teaching.

Four independent examiners are appointed by the Law Society, to conduct the examinations in the school.

The course of study in the school is as follows:

FIRST YEAR.—Jurisprudence, Real Property, Common Law, Practice and Procedure.

SECOND YEAR.—Criminal Law, Real Property, Personal Property, Contracts, Torts, Equity, Evidence, Constitutional History and Law, Practice and Procedure.

THIRD YEAR.—Contracts, Real Property, Criminal Law, Equity, Torts, Evidence, Commercial Law, Private International Law, Construction and Operation of Statutes and Statute Law, Canadian Constitutional Law, and Practice and Procedure.

In all the years a number of statutes relating to the various subjects of instruction have also to be mastered.

In addition to lectures by the staff, special lectures are delivered to the third year students by judges of the Superior Courts and prominent members of the Bar, on Legal Ethics, the Municipal Acts, the duties of a Counsel at the trial of an action, Guarantees, Powers of Directors of Joint Stock Companies, and the procedure in the winding up of companies under the Dominion and Provincial acts for that purpose.

It may not be out of place to state that the whole cost to the student is under \$300; the sum of \$50 is paid to the Law Society on admission as a student at law, \$160 for call to the Bar and admission as a solicitor, while the Law School fees are only \$25 a term, \$75 in all for three years education for his profession.

#### MOOT COURTS.

These form part of the system of instruction in Dalhousie, McGill and Osgoode Hall.

At Dalhousie, every candidate for the LL.B. degree is required to argue one case in his second year and two in his third; attendance by students other than the contestants being voluntary; as a rule about one-third of the students attend the hearing of the arguments. The Faculty of Dalhousie think well of the effect of these courts.

In McGill, the experience of Moot Courts has not been very encouraging. They are held only at rare intervals and attendance by the students is entirely optional.

The practical difficulty seems to be that the students, being all more or less engaged in office work, and having also a great deal of matter to read in connection with the lectures and for the purpose of examinations, have not much time at their disposal for working up cases for argument.

In the Osgoode Hall Law School, Moot Courts are held in the second and third years, and attendance by the students is obligatory. So far as the disputants themselves are concerned, considerable interest is manifested and arguments are very carefully prepared. The interest shown by those who do not take part in the argument is dependent largely upon the skill and ability with which it is conducted. Any lack of interest that there may be is owing in part to a lack of these qualities by the disputants, and in part to the unreality of the subject matter of discussion:

*“ Fabula, non judicium, hoc est; in scœna, non in foro, res agitur.”*

An attempt has been made to counteract any lack of interest, by announcing that some of the Moot Court cases will be utilized in the examination papers, and this has been actually done in some subjects, the effect being beneficial as far as general interest in these subjects is concerned. But on the whole, in my judgment, Moot Courts are not very valuable factors in legal education, so far as non-combatants are concerned.

Although the Law Society of Ontario has taken the advanced position outlined above, in regard to legal education, there are still to be found not a few members of the profession who doubt the desirability of maintaining any law school, and who point to the high position at the bar taken by many men who have not had the advantage of any definite legal training.

If there be here to-day any such a "*laudator temporis acti*," I will quote for his consideration the words of two very distinguished English judges on the subject of legal education.

Lord Russell, the Lord Chief Justice of England, whose eloquent plea for International Arbitration has, I am sure, not been forgotten in this country, gives this opinion :

"I do not deny that without the liberal equipment which I would desire, men of ability may make large incomes, and even have distinguished careers at the bar, but I maintain that their careers would have been still more distinguished, their mark on their generation graven still deeper, and their contributions to the wisdom of the world, still weightier, had they possessed it."

And Lord Justice Vaughan Williams says :

"My own experience, gathered from an observation of many men at the Bar and solicitors, is this, that if a man commences practice without having learned the principles of the law, he never learns them afterwards."

"I know of many instances of young men in the legal profession, who, from one cause or another, have sprung into business at once, and have continued a successful business through many years, and of whom I have heard it said, a very able man, but not a good lawyer."

“ He may go on and become a leader on a circuit, and he may become even more than this, but as he began, so will he end—not a good lawyer. The principles of law must be learned at the beginning.”

Not without interest in this connection is a published criticism upon the work as a judge of the late Lord Esher:

“ As a lawyer he suffered, like a good many other English judges, from the fact that he had never a really scientific training in the law, a defect which, not infrequently, led him to endeavor to do what he conceived to be ideal justice in the case before him, wholly regardless of whether his views of ideal justice accorded with those of the rest of the world.”

This paper would be incomplete so far as the latter part of it is concerned, without quoting the words of that very distinguished member of the American Bar and of the American Bar Association, Mr. Joseph Choate, whose high political duties at the Court of St. James prevent his presence at this meeting, and whose absence—*hiatus valde deflendus*—is a subject of great regret to us all. He says: “ The young men who come annually from the law schools to recruit our ranks are better equipped and qualified—far more than ever we were—to enter upon the arduous and responsible duties that await them.”





# THE TEACHING OF THE LAW IN FRANCE

BY

THOMAS BARCLAY,

OF PARIS, FRANCE.

In venturing to address your honourable body on the subject of legal education in France, I must express my regret that I am unable to make any comparisons from personal knowledge with the condition of legal education in the United States. I hoped, had I been able to address you in person, to cure that defect by a visit to one or more of your law schools. If I speak of American schools, I do so subject to correction and must draw for comparison rather on England than on your country.

Law Schools are of course intimately connected with the character of the legal profession, and with your permission I will preface my remarks with a few observations on the differences between France, America and England. In England as you know, the two branches of the profession are still distinct. The barristers obtain their professional education under an arrangement entered into among the four corporations into which they are divided, and which are known as Inns of Court. By this arrangement lectures are provided for the students, though they are little attended by them, and qualifying examinations are held in the chief branches of the law preliminary to admission to practice in the courts. A corporation of Solicitors also provides lectures and examinations which, combined with compulsory clerkship in practising solicitors' offices, qualify for the exercise of the solicitors' branch of the profession.

Apart from the professional studies and examinations, we have law classes at our universities, where some law is taught,

but generally without reference to practice, and degrees in law are granted which the Inns of Court recognise only to a limited extent.

I gather from the synopsis published in your most interesting "Report on Legal Education" of 1893, that, apart from the fusion of the two branches of the profession, legal education is in much the same condition in the United States as in England; that is, with a few exceptions the law students and examinations are expressly directed to the training of court practitioners, whether counsellors or attorneys, the exceptions being that some special lectures are provided by certain Universities on Roman law, general jurisprudence and International law which have no reference to any professional course.

In France the system is totally different.

There the legal profession is divided into a great number of different branches. There are *avocats* admitted to plead before the Courts; *avocats* not admitted to plead before the Courts; *avoués* who have the monopoly of the procedure in Courts of First Instance; another set of *avoués* who have the monopoly of the procedure in the Appeal Courts; and a third class who combine the functions of *avocat* and *avoué* before the Court of Cassation. There are *notaries* who have the legal monopoly of drawing certain deeds and of delivering certified copies of documents of all kinds, and who, through this partial monopoly, have practically drawn all the conveyancing into their hands. There are *huissiers* who have the monopoly of process-serving of all kinds, including the functions of notaries public in Anglo-Saxon lands; there are *agréés* who have the monopoly of pleading before the commercial courts; and lastly there is the magistracy, not usually recruited from the bar,<sup>1</sup> but form-

<sup>1</sup> The magistracy is recruited from the graduates in law who have passed through their three years *stage* (see *infra*). They begin by being appointed supplementary judges or assistant public procurators in courts of first instance, and rise from these to higher appointments. The law however does not prevent the appointment of advocates to all posts in both branches of the magistracy, though there are relatively few instances of this having been done.

ing a separate class of lawyers, who again are sub-divided into the *parquet*, or public procurators,—salaried public officials entrusted with the prosecution of criminal and correctional offences and with the protection of the public interest whenever it is involved in a private action, and amongst whose powers are included the protection of women, children and persons of infirm mind,—and the bench forming a hierarchy of judges who in the French system never sit less than three in judgment, two of them practically taking the place of the jury in the civil cases in England.<sup>1</sup>

Different qualifications are required for these different branches of the legal profession, but the studies necessary for their attainment are in every case provided by the same school of law. The student selects for himself, amongst the professor and lectures delivered, the particular professors and lecturers on the subject in which he must be qualified. In the case of *avoués*, notaries and *huissiers*, the qualification of legal study is confined to the practical part of the law in which they will be called upon to exercise their functions, though it is customary for students in the lower branches of the law, who can afford the expense, and who have the preliminary education enabling them to enter the University, to take the same degree in law as that which is required for those who are entering its upper branches, that is the bar and the magistracy. For the latter alone is a complete course of legal study required by law.

The law school, on the other hand, does not confine its teaching to the preparation of the student for a professional career in law. The study of the law is the university training of the well-to-do Frenchman, of the Frenchman who aspires to any of the higher grades of the administration and of those who intend to offer themselves for the diplomatic or consular service.

<sup>1</sup> I should mention that under French law the jury is a part of the system for the trial of criminal, as distinguished from correctional and civil cases. The correctional court sits for the trial of *délits*, the nearest equivalent of which in English is misdemeanour, without a jury.

Thus, official instruction in the law in France is not directly connected with any profession. The law faculty of the university, in which it is given, is like the faculty of arts or science. The aim is to afford the student the means of acquiring knowledge in all departments of the law. These different departments, however, are co-ordinated, to enable the student to study law systematically, and, if he wishes, to conclude his studies by taking the degree which qualify him for the higher branches of the profession, or to certify that he possesses that knowledge of principles and theory, apart from practice, which the French consider as indispensable to a man who has to apply the law as a public official.

There are thirteen complete faculties of law in France. Of these I can only speak from personal experience of one, viz : Paris, where I studied, but I may add that the other faculties only differ from that of Paris in being organized on a smaller scale.

The Paris faculty is composed of twenty-nine professors, three assistant professors and six supplementary professors in the active exercise of their functions. The teaching of these professors is distributed with a view to enable the student to take the degree of *licence en droit* as the termination of an ordinary three years course of university study. There is an examination at the end of each year and no student for the degree of *licence* can enter for either of the three examinations out of their prescribed order.

The subjects of the first year's study are as follows : *Roman law*—the lectures on this subject embrace the whole of the legal institutions of Rome, with a view to initiating the student into the part which history plays in the development of law. *History of French civil and constitutional law*—here the idea is to awaken in the student that interest in tradition and at the same time that critical understanding of laws by reference to their origin, which will bring him to respect their character without making him a slave to their form.

In the same order of ideas there is a course of lectures for the first year's student in *Political Economy*, treated with regard to the current development of legislation, on the assumption that he will be enabled to understand a law better if he sees the reason for it. Lastly, is included about one-third of the contents of the *Civil code* in which the lecturer endeavours again to explain why the law is as it is and, as far as possible, to connect its provisions with the ethical basis upon which it rests.

The second year's study includes another one-third approximately of the matters treated in the *Civil code*. The study of *Roman law* continues, but in this year it is treated with special reference to what contemporary French law has borrowed from it. In this year also the student must attend lectures on *criminal law*, *administrative law* and *public international law*.

In the third year he takes the remaining one-third of the contents of the *Civil code*, and *Commercial law*, *Private International law* and *Civil procedure*.

The examinations are oral, except short essays on some points of practical law, which are written on the spot and are not in the nature of a thesis.

Above the *licence en droit* is a higher examination, called the doctorate of law. For this examination, which follows the *licence*—that is to say: no one who is not a *licencié en droit* can present himself for the examination in the doctorate—the subjects are practically the same, except that the knowledge required is more far-reaching. In Roman law the lecturers for doctorate include the Digest. and the lecturers on the Civil and criminal Codes introduce comparisons with other legislations. The only real addition to the matters for the doctorate is a thesis on some subject, fixed in accord with one of the professors, who undertakes to preside at a sitting at which the candidate defends the conclusions arrived at in his thesis. A jury of the faculty is appointed, with three weeks' notice to the candidate to appear before them, and unless the

candidate shows that he thoroughly understands what he has presumed to write upon, he is not admitted to the degree. Some of these theses are valuable documents and have made the reputation of the candidate before he has left the university.

Above the doctorate is the *agrégation* or the competition for the post of supplementary professor or *agrégé*, in which the candidate not only writes a thesis, but also delivers test lectures on the branch of law he has chosen. This higher examination for the professorate can only be passed by doctors in law.

No Frenchman is entitled to call himself an advocate or to practise as such before the French Civil and Correctional courts or the Court of Assize, unless he has passed the *licence en droit*, and in addition has gone through a three years' *stage* of actual practice. This stage however is really of little or no import, inasmuch as a *stagiaire* is entitled to plead in court in order to obtain the practice it is intended this so-called stage shall afford him.<sup>1</sup>

The teaching of law in France in the manner I have described has had the effect of making the knowledge of its elements widespread among all classes of educated French society. In fact an Englishman in France is amazed to see how general such knowledge is. I cannot say that it "is a dangerous thing." The merchant, the manufacturer, the sea captain, most average men in private life, will draw up, and fairly well, a contract or any ordinary legal undertaking, without professional assistance, and if the laity can dispense with our services, we must of course be the last to complain. Fortunately for the French legal profession, the prevalence of amateurs does not seem to deprive professional men of work, for in no country are there more practising lawyers than in France.

<sup>1</sup> In the decree of December 14, 1810, the *stage* is described as the "assiduous attendance of the hearings in Court" (Art. 15). The *stagiaire* is also expected to attend the weekly "moots" presided over by the *batonnier*, or dean of the "Order of Advocates." Lastly, litigants *in forma pauperis* are committed to his care.

I have endeavored to give you, as briefly as possible, some idea of legal education and its connection with the legal profession in France, and this was all I was invited to do. As practical lawyers, however, you may expect me to add whether, according to my experience of some twenty years, the results of this education suggested any points in which it might serve as a model for Englishmen or for you.

The ground is treacherous. In comparing a French lawyer with an English or American lawyer, it is easy to mistake, as due to his special education, a state of things really due to causes much deeper or lying quite outside it.

Institutions seem only to produce their full effect on a nation when they become interwoven with its character, habits and traditions, and on these an artificial institution like programme education may be long in producing a marked influence.

The qualifying degree for the highest branch of the legal profession, as you have seen, is the *licence*, obtained in the ordinary course, after a study of three years. The intentions of those who have drawn up the necessary programme of study for this degree were excellent. The idea of giving the student a complete survey of law in all its elements and applications, of general culture in a whole great department of human intellectual activity, is admirable. I am afraid, however, that few students are gifted with a sufficient power of assimilation to derive much benefit from so exhaustive a course.

The subjects are far too numerous to allow of the student ever mastering them or any of them properly, and the discipline of thoroughness is lost. Moreover, the French mode of education generally is defective in being directed too much to the acquisition of knowledge and too little of the acquisition of the power to think, to judge and to act. Hence an English lawyer, with his wretched practical education, his almost total ignorance of principles, his incapacity to deal with a thought in law, is on an average a sounder and more sensible lawyer than a Frenchman. Perhaps this, to some extent is due to the circumstance that in ninety-nine out of every

hundred cases which come into the hands of the lawyer, matters of fact are of greater importance than matters of law and that the training in life of the young Englishman fits him better than any theoretical training in law can do to deal with matters of fact. Be that as it may, this is no reason why we should not do our best to promote a better and ever better legal education than we have.

Law is the outward manifestation of the national conscience and, as such, is not the only study for professional practitioners, but is also properly a study for politicians, civil servants, statesmen, diplomatists and all who have to administer it.

A complete faculty, after the fashion of those in France, for the study of law as a branch of scientific inquiry, would certainly promote good legislation. To have such a faculty, composed of professors to whose knowledge the legislature could appeal, and who more especially would serve as critics of existing laws, would be of priceless value to the nation.

As regards the examinations and education for the bar, other things besides a knowledge of the principles of the law are necessary, and it is only, I believe, by severe mental discipline and an ingenious combination of wide knowledge of things in general, as well as of law and actual practice in the work of the profession, that good, sensible lawyers, as heretofore, will continue to be made.



# NOTES ON THE EARLY HISTORY OF LEGAL STUDIES IN ENGLAND.

BY

JOSEPH WALTON, ESQ., Q. C.,  
OF LONDON, ENGLAND.

From the title of this paper it will be understood that I have no intention to put forward any theory or scheme of legal education. My less ambitious design is to trace in outline the history of the study of English law in England from its commencement to the middle of the present century. I find in your printed proceedings a full account of its later development.

In order to form any accurate conception of the early history of legal studies in England, it is necessary to recall something of the origin and development of English law. For the present purpose it would be unprofitable to explore the obscure period which preceded the Norman invasion of the Eleventh Century. We know that when the Normans came, the ordinary courts for the public administration of justice were the county courts and the hundred courts. There were already some private jurisdictions, but the Norman lords set up everywhere, throughout the land, their own courts for the administration of justice to their own tenants; and of these feudal courts the Court of the King, the universal over-lord, was the first, exercising a supreme control, the precise character of which would be difficult to define. The state of things under the Norman Kings is described by Sir Frederick Pollock and Professor Maitland, in their admirable history of English Law. "The country," they say, "was becoming covered with small courts; everyone who could was acquiring or assuming *sake* and *soke*. The courts rose one above the other; the great old tribal customs were breaking up into multitudinous petty cus-

toms. This introduced new complexities. We can see that for the writer of the *Leges Henrici* the grand central problem of the law is the question, Who in the myriad of possible cases has *sake* and *soke*, the right to hold a court for the offender and to pocket the profits of jurisdiction? The claims of the lords, the claims of the church, the claims of the king are adding to the number of the various fines and mulcts that can be exacted, and are often at variance with each other.

\* \* \* The old law consisted very largely of rules about these matters; but it is falling to pieces under the pressure of those new elements which feudalism has brought with it. For a time there must be chaos and 'unlaw;' every lord may assume what jurisdictional power he pleases, and will be able to find in the complicated tangle of rules some plausible excuse for the assumption. \* \* \* Only to one quarter can we look hopefully. Above all local customs rose the custom of the king's court. \* \* \* Of the law that this court administered we know little, only we may guess that in a certain sense it was equity rather than strict law. \* \* \* The jurisprudence of his court, if we may use so grand a phrase, was of necessity a flexible, occasional jurisprudence, dealing with an unprecedented state of affairs, meeting new facts by new expedients, \* \* \* capable of receiving impressions from without, influenced by the growth of canon law, influenced perhaps by Lombard learning, modern in the midst of antique surroundings. \* \* \* The future was to make the jurisprudence of the king's court by far the most important element in the law of England, but we can hardly say that it was this during the reigns of the Norman Kings. \* \* \* The local courts, communal and seignorial, were the ordinary tribunals for ordinary causes; the king's justice was still extraordinary."

Such was the state of things as described by Pollock and Maitland at the time when the strong hand of Henry II took up the reins of government. He was a lawyer by nature. He organized his court, made it permanent, and gave to it a staff of judges, some of whom were laymen and others great prel-

ates, men of learning and wide experience. Before the end of the twelfth century, the jurisdiction of the King's Court could no longer be considered extraordinary. It was no longer a court to be appealed to only in exceptional cases and by the great men. It was becoming the ordinary court for the administration of justice to all men. It is, I believe, quite accurate to say that it was the custom of the King's Court, which became what we know as the Common Law of England.

Pausing here for a moment, let us consider what had been the condition of legal learning, legal literature and legal studies in Europe during this period extending from the Norman Conquest of 1066 to the end of the twelfth century, the period which gave birth to our English Common Law. The Roman or Civil Law had never entirely lost its authority on the continent of Europe. But by the beginning of the eleventh century, the teaching and study of Roman Law had become almost extinct. In the latter part of the same century, however, there came a revival, whose influence must have reached as far as England and the English court. Archbishop Lanfranc, the adviser and minister of William the Conqueror, had studied the Institutes at Pavia, and before he came to England, had probably taught Roman Law in Normandy. There is abundant evidence that the writings of the famous doctors of Bologna were well known in England. In the meantime before the middle of the twelfth century the great system of Canon Law had been codified by Gratian, a monk of Bologna, whose book known as the Decretian was soon accepted as the recognized authority on questions of ecclesiastical law throughout Europe. And it is important to remember that the Canon Law was very closely allied to the Roman Law, whose spirit and forms and maxims it adapted and applied to the government of the Church. There is every reason to suppose that the twelfth century was, in England, as elsewhere, a time of considerable activity in the study of the Roman Law, especially in connection with the development and study of the Canon Law.

It was just at this time, as we have seen, that the judges of the King's Court were laying the foundations of the Common Law of England. Their jurisdiction was asserted and exercised by the issue from the Chancery of writs which, at this earliest period, were undoubtedly framed with reference to the requirements of each particular case, as it arose. The King did not allow his justice to be fettered or confined by any rigid bonds of precedent. Many of the forms were no doubt in frequent demand, and would become common forms or writs, of course. If a novel case arose, in which it seemed right that the suitor should have the assistance of the King's Court, no great difficulty was made about the modification of one of the ordinary forms to adapt it to the new case; or, if necessary, a writ in a form entirely new might be issued. It may be asked upon what principle the court or the Chancery proceeded in sanctioning a new form of action, in entertaining or refusing to entertain a new kind of case. Certainly not upon any general rules of jurisprudence to be discovered either in the Anglo-Saxon or Norman laws. The judges of the King's Court professed to administer, and no doubt believed they were administering, no law other than the customary law of England. The truth is that they were making the law. We know that much new law has been made by judges and by Chancellors and Vice-Chancellors in modern times. But the difference between the cases is this, that in the twelfth, and early part of the thirteenth century, when the jurisdiction of the King's Court was gradually superseding local and private jurisdictions, and thus no doubt protecting the general body of the people from the exactions and oppressions of the great feudal lords, it was practically impossible to distinguish between the claim to jurisdiction and the right to declare, in the exercise of such jurisdiction, what the law was or, at all events, what it should be as administered by the King's judges. In dealing with new cases as they arose, the judges must have been guided mainly by the analogy of other cases already entertained, as, of course, by considerations of natural justice

and of public convenience and policy. There was as yet, outside, at all events, of the ecclesiastical courts, no legal profession; there was no teaching of law other than Roman and Canon Law, but there was undoubtedly a flourishing school of Romano-Canonical law in England. Its influence upon the formation of the English law must not be exaggerated; it was indirect, but it cannot have been insignificant. In this early and most vigorous stage of development, which has been called the golden age of English law, it is a factor not to be overlooked that many of the judges of the King's Court had some knowledge of a great system of law to which they could look for suggestion, for comparison and experiment. The same influence is to be traced in the two famous law-books which illuminate the dawn of the Common Law. The "Treatise on the Laws and Customs of England," which bears the name of Glanville, was written about 1188, and Bracton's great book, which has been called "the crown and flower of English medieval jurisprudence," appeared about seventy years later. It is not unimportant to observe that, after Bracton, although English law produced year books and abridgements and some commentaries and treatises on special subjects, no work appeared that can truly be called institutional until the publication of Sir William Blackstone's Commentaries in the second half of the eighteenth century. It seems clear that the free and continuous development of the Common Law was checked soon after the time of Bracton. Even when he was writing his book, the Barons, then on the eve of open war against King Henry III, were complaining, amongst other things, of the extension of the jurisdiction of the King's Court, and of the new forms of writs, which were being issued without the consent of the Council and under no authority other than that of the Crown. By the provisions of Oxford, the Chancellor is made to swear "that he will seal no writ excepting writs of course, without the commandment of the King and of his Council, who shall be present." It is evident that before the year 1285, the claim of the King to issue, through his

Chancery, without express legislative sanction, writs which did not strictly follow the ancient forms, had been abandoned. Apparently this limitation of the jurisdiction of the King's Court gave rise to difficulties, for in the year 1285, by the Statute of Westminster the second, power was given to the Chancellor to adapt writs which were employed as writs of course or common forms for other cases, to any similar case requiring the same remedy. This relaxation of the prohibition against the issue of new writs was strictly and narrowly construed and had little practical effect. The English law, as administered by the King's Court, had from the beginning depended essentially on forms. No cause of action was recognized unless it could be expressed in a writ. *Prima facie*, legal rights depended on the list of writs known to the Chancery. But in the early days, when equity required it, the Chancery could add to the list. When this power was taken away and the list was closed, and we find that Parliament failed to complete the work which the Chancellor and judges of the King's Court had begun, doing practically nothing by legislation after the reign of Edward I to shape the law into an adequate and comprehensive system, it is not difficult to understand how it was that English law became a highly technical craft, an occult art, a mere study of ancient forms, and of the fictions and devices by which they were allowed to be evaded, in order that justice might in some fashion be done—a study which for centuries afforded no subject for literature or scientific treatment and entered into no scheme of liberal education.

There were, as we have seen, schools of law established at the English Universities at an early date, but the law taught was not the Common Law of England. It was the Canon Law, and probably for all practical purposes, the Canon Law only, though the study of the Civil Law was, perhaps, never entirely neglected. Henry VIII, when he quarrelled with the Pope, prohibited the study of Canon Law at the Universities and endeavored, though not with any permanent success, to

encourage the study of Civil Law in its place. But until Sir William Blackstone lectured at Oxford in the year 1754, no attempt was ever made, so far as I have been able to learn, to teach English Law at either of the English Universities. It is not generally remembered that the author of the famous commentaries on the laws of England was a poet; but in addressing myself to the remainder of my task and contemplating the condition of legal studies from the fourteenth to the beginning of the eighteenth century, I may, perhaps, be allowed to quote from Sir William Blackstone's "Lawyer's Farewell to his Muse":

"A formal band  
In furs and coifs around me stand,  
With sounds uncouth and accents dry,  
That grate the soul of harmony.  
Each pedant sage unlocks his store  
Of mystic, dark, discordant lore,  
And points with tottering hand the ways  
That lead me to the thorny maze."

At the beginning of the fourteenth century we find the King's Court in its three divisions, the King's Bench, the Common Pleas and Exchequer, sitting permanently at Westminster, which has become the "certain place" required by Magna Charta. We find the profession of the law at work in its two branches; for we read of attorneys on the one hand and of Sergeants and apprentices at law on the other. The latter class constituted the bar. The attorney represented the client as his duly authorized agent, the barrister assisted him as an expert lawyer and advocate. The judges who in the thirteenth century had probably been selected usually from amongst the clerks of the court or of the Chancery, and of whom many, if not most, had been ecclesiastics, were at the beginning of the fourteenth century nearly all laymen, and we find amongst them men who had been raised from the bar to the bench. The legal profession, therefore had, even at this early date, assumed in all that was essential, the form which, in England, it still retains. It appears to have been from the beginning

under the control of the judges. In the year 1292, the King had appointed the Chief Justice and Justices of the Common Pleas, "that they, according to their directions, should provide and ordain from every county certain attornies and lawyers of the best and most apt for their learning and skill, who might do service to his court and people; and that those so chosen and no other should follow his court and transact the affairs therein, the said King and his Council then deeming the number of seven score to be sufficient for that employment; but it was left to the direction of the said justices to add to that number or diminish as they should see fit." It was natural that students desiring to acquire the "learning and skill" required to qualify them for admission to the profession of the law, should gather together in the neighborhood of the courts at Westminster. There were provided for their reception and training—when first, or how, we do not know—certain hostells or inns, which came to be known as the Inns of Chancery and Inns of Court. We find in the reign of Edward III an interesting reference made to them as existing institutions by Sir Richard de Willoughby, one of the justices of the Common Pleas, who to an exception taken in an action before him, answered "that the same was no exception in that court, although they had often heard the same for an exception amongst the apprentices in hostells or inns." He was no doubt referring to the "moots" or "bolts" held at the Inns of Chancery and Inns of Court, at which imaginary cases were set for the training of the students and younger barristers in the argument of points of law. The Inns of Chancery appear to have been intended for clerks and as preparatory schools for students who were seeking admission to the Inns of Court. Sir John Fortescue, Chief Justice of the King's Bench, whilst in exile in the Duchy of Berne with Queen Margaret and Edward, Prince of Wales, only son of King Henry VI, wrote his treatise, *De Laudibus Legum Anglie*. It is in the form of a dialogue between himself and the young Prince, in the course of which the Prince asks "Why the laws of England, being



so good, so fruitfull and so commodious, are not taught at the Universities, as the Civill and Canon Lawes are." The Chief Justice replies that "In the Universities of England sciences are not taught but in the Latin tongue: and the lawes of the land are to be learned in three several tongues: to witte, in the English tongue, the French tongue, and the Latin tongue." He explains parenthetically that "the common speech, now used in France agreeth not nor is not like the French used among the lawyers of England, but it is by a certaine rudenesse of the common people corrupt. Which corruption of speech character not in the French that is used in England." \* \* \*

"Wherefore (he continues) while the lawes of England are learned in these three tongues, they cannot conveniently bee taught or studied in the Universities, where only the Latin tongue is exercised. Notwithstanding the same Lawes are taught and learned, in a certaine place of publique or common studie, more convenient and apt for attayning of them than any other University. For this place of studie is situate nie to the King's Courts, where the same lawes are pleaded and argued and judgements by the same given by Judges, men of gravitie, ancient in yeares, perfit and graduate in the same lawes. Wherefore, every day in Court, the students in those Lawes resort by great numbers into those Courts wherein the same lawes are read and taught, as it were in common scholes. This place of studie is set between the place of the said Courtes and the Citie of London, which of all things necessities is the plentifullest of all the Cities and townes of the Realme. So that the said place of studie is not situate within the Cittie, where the confluence of people might disturbe the quietnes of the students, but somewhat severall in the suburbes of the same Cittie, and nigher to the Courts, that the students may dayelye at their pleasure have accesse and recourse thither without wearinesse." The Chief Justice then proceeds to describe this place of study in more detail, and says that there "Bee tenne lesser houses or Innes, and sometimes more, which are called Innes of the Chancerie. And to every one of them,

belongeth an hundred students at the least, and to some of them a much greater number, though they be not ever altogether in the same. These students, for the most part of them, are young men, learning or studying the *originals*, and as it were the elements of the Lawe, who profiting therein, as they grow to ripenesse, so are they admitted into the greater Innes of the same studie, called the *Innes of Court*. Of the which greater Inns there are foure in number. And to the least of them belongeth, in forme above mentioned, two hundred Studentes or there aboutes. For in these Greater Innes, there canne no student bee mayntayned for lesse expenses by the yeare, than twenty Markes, and if he have a servant to waite upon him, as most of them have, then so much the greater will his charges be. Nowe by reason of this charges, the children onely of Noble men doe studie the Lawes in those Innes. For the poore and common sort of the people, are not able to bear so great charges for the exhibition of their children. And Marchaunt men can seldome finde in their hearts to hinder their marchandise with so great yearly expenses."

"And to speake uprightly there is," he continues, "in these greater Inns, yea, and in the lesser to, beside the study of the lawes, as it were an University or schoole of all commendable qualities requisite for Noblemen. There they learn to sing and to exercise themselves in all kinde of harmony. There also they practice dauncing and other Noblemen's pastimes, as *they* used to doe, which are brought up in the King's house: On the working daies, most of them apply themselves to the studie of the Lawe. And on the holy daies to the studie of *holy scripture*; and out of the time of Divine service, to the readyng of *Chronicles*." I find that Fortescue had been a "governor" of Lincoln's Inn in 1424, 1425 and 1428, and Pensioner in 1429. The Inns were, as he says, placed in the suburbs, out of the noise and turmoil of the City. The buildings of several of the Inns of Chancery still stand, but it is a very long time since the Inns of Chancery pretended to give any attention to the care or training of law students. The quaint courts and halls

and chapels, and the pleasant gardens of the Inns of Court<sup>1</sup> remain where they were when Fortescue wrote, no longer suburban, but still strangely quiet as we pass into them from the din of the city, and though much of their old collegiate spirit and tradition has disappeared, in constitution they have undergone singularly little change. The Benchers are still, as of old, the governing body of the Inn. No man can practice at the English bar unless he has been admitted as a student at one of the Inns of Court, and, after keeping twelve terms as a student, has been called to the Bar by resolution of the Benchers of his Inn. A term is now kept by eating a certain number of dinners in Hall. This seems odd, but it is one of the few traces left of the collegiate life of the old days, when students and barristers not only dined but lived together in their Inn, and no new member was admitted unless he could be provided with a chamber, or, to speak more accurately, with at least half a chamber within the Inn.

What strikes one most in reading the recently published records of the Inns of Court during the sixteenth and early seventeenth centuries, is the great activity of corporate life which they display. The education of the students was not left in the hands of salaried teachers, but the Benchers and the Bar alike co-operated in the work. A Reader, appointed by the Benchers from amongst themselves at each Inn of Court, gave a course of readings or lectures twice a year on some statute. Sir Thomas Lyttelton read at the Inner Temple on the statute *De donis conditionalibus*. He afterwards became a judge of the Common Pleas and wrote the famous treatise on Tenures, upon which Coke wrote the still more famous commentary. Lyttelton died in 1481. Coke himself was a Reader at the Inner Temple and chose for his subject the Statute of Uses, and it was on this same statute that Coke's great rival, Bacon, read at Gray's Inn. This reading is to be found among his published works. The education of students at the lesser Inns, the Inns of Chancery, was also undertaken

<sup>1</sup>The Inner Temple, Middle Temple, Lincoln's Inn and Gray's Inn.

by barristers of the Inns of Court. Coke, for instance, who had been a student at an Inn of Chancery before he was admitted to the Inner Temple, was sent very soon after his call to the Bar to read at Lyon's Inn. Then there were the Moots and Bolts, meetings after supper, at which fictitious cases were argued before the Benchers, at the Moots by newly called barristers, and at the Bolts probably by students. All members of the Inn, or to use the formal title, formerly so full of meaning, all fellows of the "*Honorable Society*," were bound by the obligations of fellowship to assist in maintaining a healthy and well ordered common life amongst their fellow members, young and old, and to take their part actively and personally in the work of education.

After the dissolution of the monasteries by Henry VIII, it was at the time proposed to apply some portion of the proceeds to the erection of a great school of law. The design was not carried out, but by the King's command, a scheme was prepared by Nicholas Bacon, Thomas Denton and Robert Cary.

In presenting to the King the articles which they had formulated for the constitution and government of the proposed College, they describe it as "an House of Students wherein the knowledge as well of the pure French & Latin tongues as of Your Grace's Lawes of this Your Realm should be attained, whereby Your Grace hereafter might be the better served of Your Grace's own Students of the law as well in foreign Countries as within this Your Grace's Realm." The articles contain much that is interesting but scarcely within the scope of this paper. They are founded to a large extent upon the model of the Inns of Court, and with a view to their preparation, Nicholas Bacon and his two associates had been directed by the King to inquire and report as to the constitution of the Inns of Court, and the "best form and order of Study practiced therein." And, as they say, after diligent search and reading of all the Orders of the Houses of Court, they did compendiously set forth "the most universal and general things concerning the Orders and Exercises of learning in the houses

of Court," which they "thought meet to describe and present into Your Grace's hands." This report gives the most comprehensive and clearest account of the methods of teaching and training at the Inns of Court and Chancery, at a time when the ancient system was in its prime, that I have been able to discover; and for this reason I may perhaps be excused for citing it at length. Nicholas Bacon was able to speak of the regulations of the Inns of Court, not merely from diligent search and reading of orders but also from personal experience, as he was called to the bar at Gray's Inn in 1533, was made an ancient in 1536 and a bencher in 1550. The report, which, omitting only the introductory address to the King and some details as to the wages and gratuities of servants, is set out below, was probably not made before 1540.

THE MANNER OF THE FELLOWSHIP AND THEIR ORDINARY  
CHARGES, BESIDES THEIR COMMONS.

First it is to be considered that none of the four houses of Courts have any Corporation, whereby they are enabled to purchase, receive or take lands or tenements or any other revenue, nor have anything towards the maintenance of the house, saving that every one that is admitted fellow, after that he is called to the Masters' Commons payeth yearly 3 shillings 4 pence, which they call the pension mony, and in some houses, every man for his admittance payeth 20 pence and also besides that yearly for his Chamber 3 shillings 4. all which money is the onely thing they have towards the reparations and rent of their house, and the wages of their officers.

THAT WHAT SORTS AND DEGREES THE WHOLE FELLOWSHIP  
AND COMPANY OF STUDENTS OF THE LAW IS  
AMONGST THEM DIVIDED.

The whole company and fellowship of Learners, is divided and sorted into three parts and degrees; that is to say into Benchers, or as they call them in some of the houses, Readers, Utter Barresters, and Inner-Barresters.

## BENCHERS.

Benchers, or Readers, are called such as before-time have openly read, which form and kinde of reading shall hereafter be declared, and to them is chiefly committed the government and ordering of the house, as to men meetest, both for their age, discretion and wisdomes, and of these is one yearly chosen, which is called the Treasurer, or in some house Pensioner, who receiveth yearly the said pension money, and therewith dischargeth such charges as above written, and of the receipt and payment of the same is yearly accountable.

## UTTER-BARRESTERS.

Utter-Barresters are such, that for their learning and continuance, are called by the said Readers to plead and argue in the said house, doubtful Cases and Questions, which amongst them are called Motes, at certain times propounded, and brought in before the said Benchers, as Readers, and are called Utter-Barresters, for that they, when they argue the said Motes, they sit uttermost on the formes, which they call the Barr, and this degree is the chiefest degree for learners in the house next the Benchers; for of these be chosen and made the Readers of all the Inns of Chancery, and also of the most ancient of these is one elected yearly to read amongst them, who after his reading, is called a Benchers, or Reader.

## INNER-BARRESTERS.

All the residue of learners are called Inner-Barresters, which are the youngest men, that for lack of learning and continuance, are not able to argue and reason in these Motes, nevertheless whensoever any of the said Motes be brought in before any of the said Benchers, then two of the said Inner-Barresters sitting on the said forme with the Utter-Barresters, do for their exercises recite by heart the pleading of the same Mote-Case, in Law-French, which pleading is the declaration at large of the said Mote-Case, the one of them taking the part of the Plaintiff, and the other the part of the Defendant.

## THE ORDER AND EXERCISE OF LEARNING.

The whole year amongst them is divided into three parts; that is to say, the learning Vacation, the Terme-times, and the meane and dead Vacation.

They have yearly two learning-Vacations, that is to say, Lent-Vacation which beginns the first Munday in Lent, and continueth three weeks and three dayes, the other Vacation is called Summer-Vacation, which beginneth the Munday after Lammas day, and continueth as the other, in these Vacations are the greatest conferences, and exercises of study that they have in all the year, for in them these are the Orders.

## THE EXERCISES OF LEARNING IN THE VACATION. THE MANNER OF READING IN THE INNS OF COURT.

First, The Reader and Ancients appoint the eldest Utter-Barrester in continuance, as one that they think most able for that Roome, to reade amongst them openly in the house, during the Summer-Vacation, and of this appointment he hath alway knowledge about half a year before he shall reade, that in the mean time he may provide therefore, and then the first day after Vacation, about 8 of the clock, he that is so chosen to reade openly in the Hall before all the Company, shall reade some one such Act, or Statute as shall please him to ground his whole reading on for all that Vacation, and that done, doth declare such inconveniences and mischiefs as were unprovided for, and now by the same Statute be [remedied] and then reciteth certain doubts, and questions which he hath devised, that may grow upon the said Statute, and declareth his judgement therein, that done, one of the younger utter-Barresters rehearseth one question propounded by the Reader, and doth by way of argument labour to prove the Readers opinion to be against the Law, and after him the rest of the Utter-Barresters and Readers one after another in their ancienties, doe declare their opinions and judgements in the same, and then the Reader who did put the Case, indeav-

oureth himself to confute Objections laid against him, and to confirme his own opinion, after whom, the Judges and Serjeants, if any be present, declare their opinions, and after they have done, the youngest Utter-Barrester again rehearseth another Case, which is ordered as the other was; thus the reading ends for that day; and this manner of reading and disputations continue daily two houres, or thereabouts.

And besides this, daily in some houses after dinner, one at the Readers Board, before they rise, propoundeth another of his cases to him, put the same day at his reading, which Case is debated by them all in like forme, as the Cases are used to be argued at his reading, and like order is observed at every messe, at the other Tables, and the same manner alwayes observed at supper, when they have no Motes.

#### LENT-VACATION.

Of those that have read once in the Summer-Vacation, and be Benchers, is chosen alwayes one to reade in Lent, who observeth the like forme of reading, as is before expressed in the Summer-Vacation, and of these Readers in these Vacations, for the most part are appointed those that shall be Serjeants.

#### THE ORDERING AND FASHION OF MOTYING.

In these Vacations, every night after supper, and every Fasting day immediately after six of the Clock, boyer ended, (Festival dayes and their evens onely excepted) the Reader, with two Benchers. or one at the least, cometh into the Hall to the Cuboard and there most commonly one of the Utter-Barresters propoundeth unto them some doubtful Case, the which every of the Benchers in their ancienties argue, and last of all he that moved; this done, the Readers and Benchers sit down on the Bench in the end of the Hall, whereof they take their name, and on a forme toward the midst of the Hall sitteth down two Inner-Barresters, and of the other side of them on the same forme, two Utter-Barresters; and the Inner-Barres-



ters doe in French openly declare unto the Benchers, (even as the Serjeants doe at the Barr in the King's Courts, to the Judges) some kinde of Action, the one being as it were retained with the Plaintiff in the Action, and the other with the Defendant, after which things done, the Utter-Barresters argue such questions as be disputable within the Case (as there must be alwayes one at the least) and this ended, the Benchers doe likewise declare their opinions, how they think the Law to be in the same questions and this manner of exercise of Moting, is daily used, during the said Vacations.

This is alwayes observed amongst them, that in all their open disputations, the youngest of continuance argueth first; whether he be Inner-Barrester or Utter-Barrester, or Benchers, according to the forme used amongst the Judges and Serjeants.

And also that at their Motes, the Inner-Barresters and Utter-Barresters doe plead and reason in French, and the Benchers in English, and at their reading the Readers Cases are put in English, and so argued unto.

#### EXERCISES OF MOTES IN THE INNS OF CHANCERY, DURING THE VACATION.

Also in the learning-Vacations, the Utter-Barresters which are Readers in the Inns of Chancery goe to the house whereunto they reade, Either of the said Readers taking with them two learners of the house they are of, and there meet them for the most part two of every house of Court, who sitting as Benchers, (doe in Court at their Motes) hear and argue such motes as are brought in, and pleaded by the Gentlemen of the same houses of Chancery, which be nine in number, four being in Holborn, which be read of, Grayes-Inn and Lincolns-Inn, And Lincolns-Inn have Motes daily, for the most part before noon, which begin at nine of the Clock, and continue until twelve, or thereabouts, and the other five which are within Temple Bar, which are of the two temples, have their Motes at three of the Clock in the afternoon.

## THE EXERCISES OF LEARNING IN THE TERME TIME.

The onely exercise of learning in the Terme-time, is arguing and debating of Cases after dinner, and the Moting after supper, used and kept in like forme, as is heretofore prescribed in the Vacation-time, and the Reader of the Inns of Chancery to reade three times a week, to keep Motes, during all the Terme, to which Motes, none of the other houses of Court come, as they doe in the learning vacations but onely to come with the Reader of the same house.

## THE EXERCISES OF LEARNING IN THE MEAN-VACATION.

The whole time out of the learning Vacation and Terme, is called the Mean-Vacation, during which time, every day after dinner, Cases are argued in like manner as they be in other times, and after supper Motes are brought in and pleaded by the Inner Barresters, before the Utter-Barresters, which sit there, and occupy the roome of Benchers, and argued by them in like forme as the Benchers doe in the Terme-time, or learning Vacation.

## THE MANNER OF CHRISTMAS USED AMONGST THEM.

The Readers and Benchers at a Parliament or Pension held before Christmas, if it seeme unto them that there be no dangerous time of sickness, neither dearth of victuals, and that they are furnished of such a Company, as both for their number and appertaines are meet to keep a solemn Christmas, then doe they appoint and chose certain of the house to be Officers, and bear certain rules in the house during the said time, which Officers for the most part are such as are exercised in the King's Highness house, and other Noble men, and this is done onely to the intent that they should in time to come know how to use themselves. In this Christmas time they have all manner of pastimes, as singing and dancing, and in some of the houses ordinarily they have some interlude or Tragedy played by the Gentlemen of the same house, the

ground and matter whereof is devised by some of the Gentlemen of the house.

#### THE MANNER OF THEIR PARLIAMENT OR PENSION.

Every quarter, once or more, if need shall require, the Readers and Benchers cause one of the Officers to summon the whole company openly in the Hall at dinner, that such a night the Pension, or as some houses call it the Parliament, shall be holden, which Pension or Parliament in some houses, is nothing else but a conference and Assembly of their Benchers and Utter-Barresters onely, and in some other of the houses, it is an Assembly of Benchers, and such of the Utter-Barresters and other ancient and wise men of the house, as the Benchers have elected to them before time, and these together are named the Sage Company, and meet in a place therefore appointed, and there treat of such matters as shall seem expedient for the good ordering of the house, and the reformation of such things as seem meet to be reformed. In these are the Readers both for the Lent and the Summer-Vacation chosen; and also if the Treasurer of the house leave off his office, in this is a new chosen. And alwayes at the Parliament holden after Michaelmas, two Auditors appointed there, to hear and take the accounts for the year, of the Treasurer, and in some house, he accounts before the whole Company at the Pension, and out of these Pensions all misdemeanours and offences done by any Fellow of the house, are reformed and ordered according to the discretions of certain of the most ancient of the house, which are in Commons at the time of the offence done.

There is reason to think that it was not very long after this report was written that the old system of education at the Inns of Court began to show some signs of decline. In the 16th and early 17th centuries the country was advancing in prosperity by leaps and bounds, and as is happily always the case, good times were busy times for the lawyers. It was a hard task for leaders of the Bar to give three weeks of the

Lent or summer vacation to a reading at Lincoln's Inn or the Temple, especially as these were just the times when the Assize Courts were at work in the distant country towns; and we can understand that hard worked Benchers may not always have been very willing to spend their evenings in listening to the ingenious and probably lengthy arguments of budding barristers, in complicated cases between parties who had no existence except in the imagination of the pleaders. And in addition to this, there was the intolerable and increasing burden of the extravagant feasts which it was becoming the custom for the Readers to give during the period of their reading. Important orders for the regulation of the Inns of Court were made by the Privy Council in 1574; and the frequency with which similar orders were repeated during the reigns of James I and Charles I seems to indicate that there was an increasing difficulty in maintaining the efficiency of the old system of legal training and instruction. These orders show that the course of learning which a student had to pass before he was allowed to practice at the bar still occupied at least seven or eight years; but the constant complaint is that though the readers were making their feasts more splendid and more costly, they were making the period of their reading shorter and their readings fewer, threatening, as the judges say, in 1591, an "almost utter overthrow of the learning and study of the law, and consequently an intolerable mischief to the commonwealth of the realm."

In the reign of Charles I the references in the records to readings and moots become less frequent. In April, 1630, there is a complaint against a student of Lincoln's Inn, one William Gibbs. He was charged with a bolt, and should have prepared the case and taken it to a Mr. Mitton, an utter barrister. He neglected to do so. Mr. Mitton complained, and Gibbs replied that he might make a fail of it if he pleased, or in other words—get Mr. Gibbs fined for his default. "And thereupon Mr. Mitton did rise, and in going his way Mr. Gibbs followed him and pulled him by the eare or the hair, using

very uncivil and disgraceful speeches in the Hall and in the entrie as they went out of the Hall together." Gibbs was suspended but afterwards readmitted on payment of a fine. He is called to the bar in October, 1632, and following his interesting story for the light which it throws on our subject, we find that after a somewhat stormy career as an utter barrister, shortly after the outbreak of the civil war in 1642, he and very many other gentlemen of the Inn absent themselves altogether ; in consequence of which no exercises are performed, no Commons kept, no dues paid, and the Inn is getting into serious difficulty. The Commons in Parliament by an order dated the 18th of June, 1644, direct that all the chambers of the delinquents in the several Inns of Court shall be seized and disposed of by the Masters of the Bench, and the benefit employed for the support of the Society. About this time, Lincoln's Inn is selling its plate (except the spoons) to enable it to pay its way. And taking advantage of the order of the Commons, the Masters of the Bench in 1646 directed that the chambers of Mr. Gibbs and a great many other delinquent gentlemen shall be seized to the use of the house by the steward and chief butler. We hear no more of Mr. Gibbs. In 1657 the Commons recommend to his highness The Protector Cromwell and the Council to take some effectual course, upon advice with the judges, for reviving the readings in the several Inns of Court and the keeping up of exercise by the students thereof. Some feeble attempt was made to restore the course of teaching, but the times appear to have been discouraging and depressing. At a Council held on the 10th November, 1659, the Benchers of Lincoln's Inn resolved that "in regard to the unsuitableness of mirth and jollity to the condition of the present time, it is thought fit and ordered that for the future there shall be no music in the hall without the consent of four of the Benchers sitting in the upper mess of the Bench table at dinner first obtained, who are hereby empowered to indulge the gentlemen of the Society their wonted recreation when the time shall appear more suitable

for it." Shortly afterwards came the restoration and King Charles II, and I have no doubt the music and wonted recreation were speedily revived. But there was no real restoration of the ancient methods of legal training. The forms were retained, and the extravagance of the readers' feasts became greater than ever, if we may judge from Roger North's account of the entertainment given by his brother Francis, afterwards Lord Keeper Guilford, during his readership at the Inner Temple. Even after the Restoration some public lectures were given by the Readers, the last, apparently, being those given during this same readership by Francis North. His brother, Roger North, who lived well into the eighteenth century and died at the age of 83, wrote, probably late in life, an interesting Discourse on the Study of the Laws, which was first printed and published in the year 1824, edited, I believe, by Mr. Roscoe, whose name is still so well known from his books to all practicing lawyers. The opening sentences of Roger North's Discourse depict in a few words the condition of legal education in England about the time of the revolution of 1688:—

"Of all the professions in the world, that pretend to book learning, none is so destitute of institution as that of the Common Law. Academick studies, which take in that of the civil law, have tutors and professors to aid them, and the students are entertained in colleges under a discipline, in the midst of societies, that are, or should be, devoted to study; which encourages, as well as demonstrates, such methods in general as everyone may easily apply to his own particular use. But for the Common Law, however, there are societies which have the outward show or pretense of Collegiate Institution, yet in reality, nothing of that sort is now to be found in them; and whereas in more ancient times there were exercises used in the Hall, they were more for probation than for institution; now even those are shrunk into mere form, and that preserved only for conformity to rules, that gentlemen by tale of appearances in exercises rather than by any sort of performances, might be entitled to be called to the Bar."

The old teaching tradition of the Inns of Court was indeed lost, not to be recovered for many long years. But it must not be supposed that the spirit of learning was dead. The student, however, was left to shape out his own course of studies for himself. What that course was, if wisely planned, we may learn from Mr. Roger North's excellent discourse. Roger North died in 1733, and it was about this time, probably, that the custom first grew up for students to give some time, in the course of their preparation for the Bar, to practical work in a solicitor's or attorney's office, and later it became the almost universal rule for the student to become a pupil for from one to three years in the chambers of a Conveyancer, Equity Draftsman or Special Pleader. No serious attempt, however, was made to revive the academic teaching of English law until Sir William Blackstone delivered his famous lectures at Oxford, in 1754, and persuaded Mr. Viner, who died in 1755, to leave some 12,000 pounds to endow the Oxford professorship which bears his name. The Inns of Court did not awake to a sense of their responsibility in connection with legal education until about fifty years ago. The attorneys and solicitors had already, in 1832, established their great Society, which has done so much to maintain a high standard of education, efficiency and honorable conduct in their branch of the profession in England. In 1846 the Benchers of the four Inns of Court established the Council of Legal Education, and with the creation of this Council, the modern history of legal education for the Bar in England begins and my story ends.

It has been far too long and I must not detain you by attempting to make any practical application of the old story to the conditions of to-day. I venture to add just a word: The one great inheritance which we—and I speak of a heritage which is common to all of us—have received from the system which I have tried to describe, is the spirit of comradeship and good-fellowship which I believe always has prevailed as it still prevails amongst men at the bar, a spirit which largely assists

in keeping alive that tradition of courtesy, of generosity in rivalry, and what is of far higher importance, of straightforward and honorable dealing, which makes our profession one of which—speaking as Chairman of the General Council of the Bar in England and as the guest of this great Association of the Bar of America—I may say that we are all of us justly proud.



PROCEEDINGS  
OF THE  
SECTION OF PATENT LAW.

*August 28, 1899, 3 P. M.*

James H. Raymond, Chairman of the Section, being absent from the meeting in consequence of temporary illness, L. L. Bond, of Illinois, occupied the Chair.

Present: L. L. Bond, of Illinois; H. C. Duell, Commissioner of Patents, Washington, D. C.; Albert H. Walker, of New York; Hector T. Fenton, of Pennsylvania; James I. Kay, of Pennsylvania; Edmund Wetmore, of New York; Robert S. Taylor, of Indiana; E. B. Sherman, of Illinois; Melville Church, of Washington, D. C.; Edward Q. Keasbey, of New Jersey; Alfred Wilkinson, of New York; Charles Martindale, of Indiana; Francis Rawle, of Pennsylvania; Charles F. Libby, of Maine.

The opening address of James H. Raymond as Chairman was read by L. L. Bond.

The minutes of the previous meeting were approved as published in the Annual Report of the Association for 1898.

On motion of James I. Kay, the Chair was instructed to appoint a committee of three on nominations, to report at the next session of the Section, August 29th. The Chair appointed Edmund Wetmore, E. B. Sherman and Charles Libby.

A paper by Frederick P. Fish, of Boston, entitled "The Conditions Under Which Preliminary Injunctions in Patent Causes Should be Granted or Refused," was read by Edmund Wetmore, of New York, in the absence of Mr. Fish in Europe.

A paper in reply to that of Mr. Fish was read by L. L. Bond, of Chicago.

There was a general discussion of the two papers by Robert S. Taylor, Albert H. Walker, James I. Kay, Melville Church and E. B. Sherman.

*Tuesday, August 29, 1899, 4.15 P. M.*

James H. Raymond, Chairman of the Section, in the Chair.

Arthur Steuart read a paper on "What Constitutes Invention in the Sense of the Patent Law."

E. B. Sherman, of Illinois, read a paper on "Masters in Chancery."

Robert S. Taylor, of Indiana, read a paper on "Shall there be One or More Special Courts of Last Resort in Patent Causes?"

C. H. Duell, Commissioner of Patents, addressed the Section.

On motion of Charles Martindale, of Indiana, it was resolved that all the papers read before the Patent Section of the American Bar Association, at this meeting, be referred to the Committee on Publications, with the request that they be printed as a part of the proceedings of the Bar Association.

On motion of Robert S. Taylor, it was resolved that the Secretary of the Section be instructed to request of the Executive Committee to have printed 1000 extra copies of the paper of Frederick P. Fish, for the use of the Section.

The Committee on Nominations reported the names of Frederick P. Fish, of Massachusetts, for President, and Arthur Steuart, of Maryland, for Secretary. The nominations were closed, and the nominated officers elected.

On motion of James I. Kay, of Pennsylvania, it was resolved that a standing committee of the Section on the Patent Office be created, to be appointed by the Chair, and to consist of three members, who are to consider Patent Office rules and practice, and to report at the next meeting. The motion was adopted and the Chair appointed James I. Kay, Chairman; Melville Church and Alfred Wilkinson.

On motion, it was resolved that a special committee be appointed by the Chair on the "Procedure of Federal Courts for the Trial of Patent Causes," to consist of three members, who should report at the next meeting. The motion was adopted and the Chair appointed Robert S. Taylor, Chairman; L. L. Bond and Edmund Wetmore.

The following officers of the Section were then elected: Chairman, Frederick P. Fish, of Massachusetts; Secretary, Arthur Steuart, of Maryland.

On motion, adjourned *sine die*.

ARTHUR STEUART,  
*Secretary.*



ADDRESS  
OF  
JAMES H. RAYMOND,  
OF ILLINOIS,  
AS CHAIRMAN OF THE SECTION OF PATENT LAW.

*Gentlemen* :—As the author of a book should write the preface thereto after the book has been completed, so I should have prepared this address before I announced its title. It will appear that I should have given it no title except that of an opening address for this very important meeting of this Section.

This Patent Section of the American Bar Association has a very important function to perform. It is a Section of what I believe to be at once the most conservative and the most effective association of lawyers on earth.

In correcting existing defects and in the guidance of the progress of the law, associated action is absolutely necessary to any good result. We have an association of patent lawyers in Chicago which is active and efficient, and of great benefit in many directions in the Middle Western States; but as to questions of Congressional action, and as to questions of practice in and of decisions by the courts, its effective influence is practically and necessarily local. In Washington, among the patent counselors and the patent solicitors, we have had for many years an association which has had many lives, many deaths and many resurrections. Beyond the associations named, we have not had, and have not now, in this country, any association of lawyers who can be induced to pay any practical attention to the patent laws.

If this Section shall arrive at careful conclusions, which may be adopted by this Association, the existing defects in the patent law will be corrected and its progress will be wisely guided.

In this Section is the place in this country for this work to be done.

In this first formal opening address before this Section I shall not, as is the custom concerning such addresses in the Association, confine myself to the events of the past year.

Previously occupied in the special study and practice of the law of railways, I, in 1874, began the practice of the patent law as a specialty. What I shall submit by way of a review will, in some respects, cover the quarter of a century ending with this year.

A quarter of a century ago, Mr. Bishop, of Connecticut, an ex-Commissioner of Patents, in an important hearing before a committee of Congress, said, in substance: "You cannot drive a nail into a railroad car without driving it through three or four patents." At the same hearing, another said: "It would seem as if the Congress, the courts and the country were all patent mad."

If the reports to which I have had access are correct, these just remarks of twenty-five years ago are now only applicable in Germany, where, if I am correctly informed, banks are loaning money in considerable amounts, and in a sufficient number of instances to establish a condition, at ten per cent., for investment in German patents. Upon the same authority, I add that the investments now being made there are very largely in German patents upon American inventions.

Treating the Congress, the courts and our country as one, it would now seem as if the pendulum of sentiment had swung to the opposite extreme and that a blow is impending against that which, more than all else, has contributed to our industrial and commercial growth.

I propose to present, and necessarily briefly and in the rough, first, some conclusions as to the organization and administration of our Patent Office, and, second, two aspects of the criticisms which have been lately so freely made concerning the *administration* by the courts of our patent laws. The present conditions impel the use of the word *administration* rather than the word *application*, in this regard.

To my mind, the organization and the administration of the Patent Office at Washington, not excepting the application of the law by the courts, much less excepting the Smithsonian Institute and its gardens, or the Bureau of Labor and its statistics, is the most important element in the United States Government, as effecting, generally and broadly, the industrial and commercial interests of its people. I do not except the War Department or the Navy Department or the Department of Justice, which may be conveniently called the remedial departments, nor do I except the other branches of the Department of the Interior, which concern, first, gratuities, by way of war pensions, and, secondly, internal improvements, in rivers and harbors and the like (which two departments depend too much upon local conditions and party-political influences), and, thirdly, the questions of titles to our public lands.

The history of the development of this country has most clearly demonstrated that the strong statement I have just made is not at all extravagant, but is absolutely true; and I want to remark with emphasis that we lawyers of this Section of this Association, whose practice of the patent law has principally been in the courts, have not given to the organization and the administration of the Patent Office that careful thought and attention and that moral and active support which are its due.

Our Patent Office has been, and greater than all other elements, governmental or otherwise, *the promoter* of the wonderful growth and prosperity of this country.

Two other facts should now be noted. First, that the Patent Office has a balance to its credit, of December 31st, 1898, in the United States Treasury, of \$4,972,976.34, the same being the excess of fees, taken from inventors, over all the expenses of this department; and, second, that, from the first, Congress has treated this department most niggardly.

These are three plain facts which we must continue, in season and out of season, to impress both upon the public mind and upon the politicians who make the appropriations.

As to the admirable and complete report of our present Commissioners of Patents, I content myself with calling your attention to a few facts shown in that report and to a pronouncement of my individual conclusions as to its recommendations:

We find, notwithstanding the fact that during the last four years the expenditures of the Patent Office have been upon a very conservative basis, that the surplus turned into the Treasury from the earnings of that Office was, for 1895, nearly \$239,000; for 1896, nearly \$211,000; for 1897, nearly \$253,000; and for 1898, *only a little more than \$1500*.

We find that the total number of patents issued in 1895 was 22,000; in 1896, a little more than 23,000; in 1897, nearly 24,000; and in 1898 a little more than 22,000, the number for 1898 exceeding the number for 1895 by only 210.

I now quote as follows from the last report of the Commissioner of Patents:

*“The position of a training school is not enviable, and it is not just to this Office to so adjust salaries that such result must necessarily follow.”*

As to this report I must content myself further with the following brief statements of conclusions:

First.—The above quotation is a perfectly proper characterization of several conditions in our Patent Office, which have existed for years. Our Patent Office, for additional reasons, which sound especially in the qualifications required for appointment to the position of an assistant examiner and the qualifications and the conditions which relate to promotions, and, above all, to the matter of a permanency of employment, has been for many years, to too great an extent, a mere training school for political favorites, who, having acquired the minutiae of the Office, graduate into a soliciting business.

Second.—I may properly and truly add that appointments in that Office, since 1836, have been, for the most part, made not from either the standpoints of judicial ability or experience, or of technical ability or experience, but from the standpoint of political party favors.



Third.—I heartily agree with the proposition that the tenure of office for the Commissioner of Patents and the tenure of office for the Assistant Commissioner of Patents, no matter what the conditions, accidental, political or otherwise, of their appointments may be, shall be for a fixed term of not less than six years.

Fourth.—I disagree with the proposition for an enactment to the effect that the life of all patents shall be limited to twenty years from and after the date when *the application* for the same shall have been filed. Such a proposition goes at the wrong end of the disease. If we are patient, the abuses to which this proposition is directed will, in my opinion, shortly, in the Patent Office, and of themselves, disappear.

Fifth.—As to permitting aliens to file caveats: If presented as a single proposition, it should be deferred for further consideration, and especially at this time when we are awaiting the report of the Commission appointed by the President in July, 1898, the pronouncement of which Commission will certainly be both conservative and comprehensive as to our international patent relations.

Sixth.—I cannot acquiesce in the recommendation that three thousand copies of the Official Gazette shall be distributed by senators and representatives in Congress. Political distribution of technical publications are largely matters of compliment and do not reach that part of the public which should have the information contained in the publications. It is also true that the present distribution of publications from the Patent Office to the clerks of the several Federal courts is not a matter of public information. I do not know of a complete *and accessible* set of bound volumes of the drawings and specifications of letters patent in any clerk's office in the United States, which is consulted, except on extraordinary occasions; and, when, in different circuits, I have in a hurry looked for such a volume, I have frequently found it in an attic, in a store room or in some out of the way place, unpacked.

These distributions, in my opinion, should be made to public libraries and should be made under the direction of and directly from the Commissioner of Patents.

Seventh.—The recommendation of the Commissioner of Patents for the enactment of a statute to provide for the registration of trade-marks used in inter-state commerce, is not a subject properly before this Section, but I may be pardoned for here expressing the carefully considered opinion that Congress is without constitutional power to make such an enactment.

Eighth.—The recommendation of the Commissioner that a fee of \$5 should be charged on petitions in interlocutory proceedings is a recommendation in the right direction. Such interlocutory proceedings may be divided into two classes. One class covers such petitions in interlocutory appeals as are made necessary, first, by the frequent tinkerings with the Rules of the Patent Office, and, second, by the heterogeneous mass of independent practices, which characterizes the different officials of the Patent Office. The second class, which, in my opinion, is equally large, includes appeals which are purely dilatory or are born of ignorance as to proper methods of procedure.

The last report of the Commissioner of Patents further shows this significant fact that during the years 1871 to 1898, both inclusive, our government issued in numbers 53 per cent. of all the patents for inventions issued in the world, other governments following in the following order: Great Britain, France, Belgium and Germany.

#### SO-CALLED MINOR IMPROVEMENTS.

It should also now be specifically remarked that, as conceded by all competent writers and economists, the principal reason why greater wages are paid in the United States than anywhere in the world, is the fact that, by virtue of the encouragement of our patent system, minor improvements, relating frequently to the smallest details of processes, methods and machines, have enabled us to reduce the cost of production and to improve the

character of the article produced, beyond that which producers in any other nation have yet been able successfully to accomplish; and I pause to say that, in view of this plain and prominent fact, any disposition to discourage the patenting of what are sometimes ironically called trifling improvements, and a disposition to annul patents therefor, if the improvement be, in the broadest sense of the terms, new and useful, should be affirmatively and earnestly opposed.

In a majority of the Federal judicial districts of our country, to-day, a disposition prevails to magnify what is called "the ordinary expected skill of shop experience," and to annul such patents as are not considered to come within the vaunted "realm of invention."

It is not necessary to refer to particular districts where this disposition most markedly prevails. It is sufficient to repeat that it now prevails in a majority of our districts; but I wish to add that, as to the welfare of our people, this disposition is, to my mind, more threatening than any question of war or any question which pertains to the results of war, can be.

In this connection I want to refer to the official statistics of the Treasury Department, which show that in 1873 the balance between our exports and imports was a balance against our country of One Hundred and Twenty Million Dollars; that in 1892 there was a balance in this regard in favor of our country of Two Hundred and Three Million Dollars; and that on June 30th, 1899, this balance in our favor was Five Hundred and Thirty Million Dollars.

I do not acquiesce in the conclusion which has been several times announced from several quarters, that the reason why the making of inventions, the issuance of patents for inventions and activity in the courts in sustaining inventions, have not kept pace in recent years with this wonderful progress, is to be found in the existence of the Spanish war. The statistics of the Patent Office for the period covered by our Civil War and for the period covered by our war with Spain, have a series of remarkable coincidences, but I am unable to find in these coin-

cidences a clear relation of cause and effect as to the retrograde in the making, in the patenting and in the sustaining of inventions which has so markedly characterized recent years.

I do, however, find in the present attitude of our courts as to patents for inventions, and especially as to patents for what are called minor inventions (which may well be left alone by defendants, producers and users if they are minor and unimportant), a threatening condition, which promises at no distant date to shift this balance of trade, and even work a revolution as to the necessary revenues for our government.

Before proceeding with the general plan of this address, I feel constrained to call your attention to some comparatively minor matters, which, however, seem to me now worthy of notice.

#### COSTS IN PATENT CAUSES.

The subject of costs taxable in courts in patent causes seems to be a subject without uniform rules in our Circuit Courts or in our Circuit Courts of Appeal, except this, that the clerks of the latter are, and with full authority, so far as circumstances may permit, following the charges of the clerks of the Supreme Court, with the interwoven charges of the Government Printing Office at Washington, the charges of the Evening Post printing office in New York and the charges of other printing offices, both urban and suburban, *mutatis mutandis*.

I am in favor of making litigation expensive, to the ends (1) that litigation may not be frivolous; (2) that our courts should not be, in any respect, moot courts; and (3) that the dignity and the integrity of those practitioners of the patent law who practice before the courts may be maintained and increased.

But I want emphatically to express an opinion which is adverse, first, to taxing inventors for the purpose of a revenue to the government, and, second, to taxing litigants in unnecessary costs in order that superannuated clerical people and

supernumerary clerk's offices may be maintained at the expense of litigants.

The costs in the Patent Office should not be reduced. Patents are now too cheap. But the revenue of the Patent Office should be usable and should be used for the betterment of its organization and work.

The taxable costs in court in patent causes should be taken up by our respective Circuit Judges for their respective circuits, a sufficient reason for which is the fact, if I have rightly informed myself, that in no two districts of any one circuit of the Federal judiciary are the taxable costs of the same.

Docket fees and some other minor items are regulated by the Rules in Equity, but as to printing the record, as to using printed copies of the record below in the Courts of Appeals, as to costs of certified copies of one thing or another from the Patent Office, as to master's fees, as to notarial fees, and as to special examiner's fees, etc., etc., we seem now to be subject to the uncontrolled, not to say whimsical, judgment of the District judge holding the Circuit Court, and we may now properly ask our Circuit judges to give us some rules which shall be operative and plain in their respective circuits, and make us independent of the "Poo-Bahs" of our several circuits, whether the latter be Clerks, Marshals, Masters, Commissioners, Standing Examiners or Special Examiners, or whether they, individually, shall exercise two or more functions of the offices I have named.

All we can now hope for in this regard is that the Bar shall push our present Circuit judges to make some uniform rules which shall cover the subject and cover all the districts of their respective circuits.

#### JUSTIFICATION BY A DEFENDANT UNDER A PATENT.

I should call your attention to the looseness of the language in recent decisions of some of our courts, which have been blindly followed by other courts, and which have gone so far as to say that where the defendant justifies under a patent

granted to him describing the complete machine used by the defendant, that fact raises the presumption that the complete machine does not involve or infringe the letters patent sued upon.

There is no such presumption in law, but, on the contrary, if a defendant's machine, although it may be more complete than the device of the letters patent sued upon, involves a combination clearly claimed therein, the presumption is in favor of infringement and is not opposed thereto.

Attention should be called to the fact that the justification by a defendant under a patent relates not at all to either the question of the validity or to the question of the infringement of the patent sued upon, but simply relates broadly to the equities between the parties with reference to the issuance of extraordinary writs, to the taxation of costs and to such other general equitable considerations as may arise. The decisions referred to should be criticized by us now and as often as opportunity may afford in order that we may not have, in this regard, another piece of pernicious judicial legislation.

#### PATENT OFFICE RECORDS.

Several questions have been discussed in recent years with reference to the statutes permitting of the recording of grants and assignments in the Patent Office, with reference to the records of that Office called "the records of irregular assignments," with reference to the manner in which, in the case of assignments, the grantees are named in the letters patent issued by the government, with reference to the recording of licenses, exclusive or otherwise, and with reference to the probative force to be accorded by law to certified copies from the Patent Office of the records of such documents.

I can now simply refer to these questions, as to which, for years, there have been many discussions.

I suggest that it may be your pleasure to appoint a committee to consider what is thus suggested and to report at our next annual meeting. The subjects are certainly of primary importance, and worthy of the careful consideration of a sub-committee.

## THE BOTKIN COMMISSION.

Attention should be called to the fact that under a "rider," imposed upon the act of Congress "making appropriations for sundry civil expenses of the Government," approved March 3d, 1899, Messrs. Alex. C. Botkin, David K. Watson and David B. Culberson, whose office is at 1416 F. Street, N. W., Washington, D. C., have been appointed Commissioners with the following duties as named in the act, the constitutional authority and the purpose of which is supposed to be *the appropriation of money* for sundry civil expenses of the government, to-wit:

First, to revise and to codify the criminal and penal laws of the United States.

Second, to revise and codify the laws concerning the jurisdiction and practice of the courts of the United States, including the Judiciary Act, the acts in amendment thereof and supplementary thereto, and,

Third, all acts providing for the removal, appeal and transfer of causes.

A preliminary partial draft by this Commission of a proposed Federal Code, published under date of July 31st, 1899, covers Chapters 1 to 12, inclusive, 20 and 21, of Title XIII of the Revised Statutes, with an incidental revision of our Federal Statutes relating to "The Court of Private Land Claims."

The partial report referred to is printed at the Government Printing Office and is being circulated by the Department of Justice.

Recalling the difficulties of the revision of 1870 of our federal statutes, recalling the multitude of inaccuracies therein contained, recalling the earnest attempts by very able and experienced lawyers to correct the inaccuracies of the revision of 1870 which resulted in what we know as the "Boutwell Revision of 1874," and without comment as to the manifold inaccuracies in this stagger at a codification of our Federal statutes, I content myself with remarking that this Associa-

tion and its members should continuously watch such proceedings, should lend its aid to kill abortive efforts and should take affirmative and active measures towards securing conservative amendatory statutes.

In my opinion a "complete codification" of statutory provisions, whether attempted with reference to a federation of states or to municipalities, or with reference to a particular state or to a particular municipality has always proved to be a complete failure.

In my opinion the monumental instances of such failures are to be found in the legislative acts of the Parliament of England (including its Practice Acts) and in the acts of the legislature of New York.

The Commissioners appointed by our several state governors, the result of whose conferences have been reported to us from time to time by Mr. Brewster of Connecticut, seem to have concluded, if Mr. Brewster's reports are correct, and without question they are, that general codifications have been failures and that all that is now to be hoped for is "partial codifications," meaning simply codifications as to particular subjects.

The difficulty of confining codification to what may or may not be covered by the term "subject," leads me to the expression of these opinions, namely :

First. No proposition, even for a "partial codification" of our Federal statutes can be proposed, which does not directly affect the basis of our industrial prosperity as contained in our Patent system.

Second. If "subjects" are to be selected for "partial codification," the advocates of codification should commence with the existing statutes which refer most directly to our industrial interests, rather than with the statutes which may be called mere remedial statutes, even though the inception of a plan for "a partial codification" may relate specially to the existing "Court of Private Land Claims!"

Third. "Side Shows," based either upon ambitions for general codifications or upon ambitions for partial codifications



should, so far as this Association is concerned, be frowned upon and ignored, except so far as definite propositions for amendments to particular statutes, with proper references and proper repealing clauses, may be presented to our Association through its constituted channels.

I now resume the original plan of this address.

Ignoring some minor statutes passed under temporary pressure and for special purposes (not to say for particular pending cases), and now ignoring those special statutes which have related to the organization and the administration of the Patent Office, we may consider that the legislative enactments concerning inventions have been few and comparatively plain.

A review of the statutory patent laws, which would be both comprehensive and accurate, might well be confined to the Act of 1793, to the revision of 1836, to the revision of 1870, (modified in the general revision of all the Federal Statutes of 1874, known as the Boutwell Revision of 1874) and to the important amendments enacted in 1897, as the result of the work of the American Bar Association.

While there is perhaps no important branch of the law which has been the subject of so few statutory enactments, it is a just and timely comment, which, I think, should be given prominence in these days, to say, as I do without hesitation, limitation or fear of contradiction, that there is no branch of the law, either of local or national application, in which there has been so much "judge-made law" as in the administration, by our several Federal courts, of the laws relating to patents.

In the intense whisperings and in the open criticisms to which our federal judiciary has been subjected in this regard in recent years, it has been fashionable always to except the Supreme Court.

It is true, as once remarked to me by the Attorney-General of England in his chambers, and I am glad to repeat his remark and to quote his exact words: "That court [the United States Supreme Court] is and has been the ablest court, with the most consistent history of any court of law on earth."

It is, furthermore, true that no other court in this country has for any two decades in succession had a consistent history in two regards, namely: first, in a liberal carrying out of the purpose of the constitution 'to promote progress in science and the useful arts;' and, second, in laying down broad and consistent and reliable rules as to the proper construction to be given to letters patent for inventions.

I do not subscribe to the conclusion that there is an inconsistency in the opinions of our Supreme Court with reference to the principles of the law and the statutes concerning amendments and jeofails. The repeated proposition that the Supreme Court in *Miller vs. The Brass Co.*, 104 U. S. 350, and in *Mahn vs. Harwood*, 112 U. S. 354, judicially enacted a statute of limitations concerning reissues of patents seems to me ludicrous. Nor do I find any inconsistency between the learned and satisfactory pronouncement in 1832 by Chief Justice Marshall in *Grant vs. Raymond*, 6 Peters 218, before any statute concerning reissues of patents was enacted, and the subsequent pronouncements by the Supreme Court.

But when I recall the long-continued and adamant silence of our Supreme Court with reference to the oft-repeated and piteous petitions of the Bar of the whole country for the announcement of some definite rules that may even fit one set of facts or one class of cases, and give to the country some inkling as to when, in patent or in other cases, it will and when it will not issue the writ of certiorari, I find somewhat of an example and somewhat of an excuse for the arbitrariness, the uncertainties and the inconsistencies which characterize some of our United States Courts of Appeal; and when I read in the statute (U. S. Rev. Stat. Sec. 4921) the plain and unequivocal words that "the complainant shall be entitled to recover *in addition* to the profits to be accounted for by the defendant, the damages the complainant has sustained," and read in the decision of the Supreme Court by Mr. Justice Clifford in *Birdsall vs. Coolidge*, 3 Otto 64, that the law must be read to mean not that the complainant may have the one

“in addition to” the other, but may have whichever is the greater, I find somewhat of an example and somewhat of an excuse for the judge-made law in the lower courts, which now, for several years, has formed the just basis of bitter and continuous complaint.

In my opinion, the decision of our Circuit Court of Appeals for the seventh circuit in what is called “*the Mast-Foos Case*,” 89 Fed. Rep. 336, was not authorized by the decision of the Supreme Court in *Smith vs. Vulcan Iron Works*, 165 U. S. 518, but was unnecessary, illogical and calamitous.

Still more calamitous is the fact that a district judge holding one of the parts of the Circuit Court for the Seventh Federal Circuit, felt obligated in the case of *Ross vs. The City of Chicago*, 91 Fed. Rep. 265, to disregard absolutely all possible application of the doctrine of comity and to make a wholly independent decision.

Because of my personal and professional connection with this litigation, which was altogether in favor of my client, the City of Chicago, I forbear further comment.

I further feel free, in this presence, to say that the books do not disclose a more glaring instance of judge-made law than the pronouncement in *Standard Elevator Co. vs. Crane Elevator Co.*, 56 Fed. Rep. 718, which, over-riding the purpose of the constitutional provision upon which our patent system is based, going quite contrary to the spirit of a long line of decisions, which begins with the decision in 1821 of Mr. Justice Washington in *Isaacs vs. Cooper*, 4 Wash. 259, and practically depriving the inventor of even a semblance of the old doctrine of the *prima facie* validity of the grant, says:

“Failing prior adjudication in favor of the validity of the patent, there must be shown such continued public acquiescence  
\* \* \* as raises a presumption of validity; a presumption not arising from the letters patent unless accompanied by public acquiescence.”

The strength of my remark is quite justified when we recall that, even to this minute, our judges, who are making such

laws, have not definitely intimated to the Bar a general rule as to what proven facts will constitute "a general public acquiescence."

But, reviewing the last quarter of a century, there is another side of this matter.

When, in the famous Tanner-Brake litigation, a final decree was entered at Circuit for \$46,000 as against seventy miles of the then 2,000 miles of road of the Northwestern R. R. Company, and covering only five years out of the twenty-one years of the life of the patent sued upon, which decree meant, by the strictest possible mathematical extension, a decree for that particular patent of \$60,000,000, it was found that something was wrong.

When, in the famous Swage-Block litigation, it was shown that if the defendants had *not used a modification* of the ordinary carpenter's slide vise, which mere *modification* was the subject-matter of the patent sued upon, the defendants would have been better off by more than \$100,000, and it further appeared that at the end of nearly two decades of litigation four defendants had to pay, pursuant to the mandates of the Supreme Court, \$416,000, it was found that something was wrong.

When, in the not so famous Headlight cases, Irwin A. Williams reissued a patent upon a burner usable in the headlight of a locomotive, which reissue was taken out solely for the purpose of covering, in terms, other modifications of lamp burners, it was held, at Circuit, in two well contested cases, that the railroad companies must pay on account of that reissued patent over \$4,800,000 (and I am now speaking with just as much mathematical certainty as I applied to the Tanner-Brake cases), it was found that something was wrong.

When by virtue of the fact that the statute of limitations in patent matters, incorporated in the revision of the patent laws of 1870, was omitted in the Boutwell revision of 1874. *stale claims*, not having the semblance of any right to any injunc-

tional remedy, were continuously being sustained in our Courts of equity, it was found that something was wrong.

I feel sure that the more recent and very frequent pronouncements by Mr. Justice Harlan as to construing acts of Congress in accordance with their plain meaning and evident intent, will suffice to correct many of the wrongs I am mentioning.

#### COMITY.

I am expected to say something with reference to the Doctrine of Comity.

I cannot now treat of the doctrine as it relates to the recognition by Federal courts of decisions by state courts or of decisions by other Federal courts, inferior or superior, in copyright cases, in trade-mark cases, in receivership and accounting cases or cases involving questions of jurisdiction, for I am constrained, as your Chairman, to limit the discussions of this Section, at least for this year, to the patent laws and the decisions thereunder, and the proper limits of this address require that my words upon this subject shall be few.

While we have earlier decisions, relating specially to the controlling force of decisions by the United States Supreme Court, the philosophical basis of the doctrine of comity in the lower Federal tribunals was first fully and broadly stated by Judge Emmons, then Circuit Judge for the then sixth circuit in 1874, in the case of *Goodyear Dental Vulcanite Co. vs. Willis*, Fed. Cas. 5603, as follows:

“If one system of co-ordinate courts more than another calls for the application of this general principle it is that of the circuit courts of the United States. They all have similar special jurisdiction, and are all, in an eminent degree, looked to for all those rules of right and property created under the federal statutes, and in reference to the subjects coming within the federal constitution. Although divided in jurisdiction geographically, *they constitute a single system*; and when one court has fully considered and deliberately decided a question,

every suggestion of propriety and fit public action demand it should be followed until modified by the appellate court."

A familiar quotation of those and subsequent days, with reference to a pronouncement by any one sitting as a Federal judge, is this: "Then this judicial duty should be deemed to have been performed."

This doctrine took deep root and grew with the result that for years it was thought just as improper for a judge of one circuit court to decide differently from a judge of another circuit, as it would be for a judge of a district court holding the circuit court to decide differently from the circuit judge of his own circuit.

In one case in which a blunder was committed by a circuit judge of the second circuit, by holding a claim for five specified elements, each necessary in the machine patented, to be infringed by a subsequent machine in which two of the elements specified were *wholly* absent, a judge of the seventh circuit *refused to hear argument* by eminent counsel, blindly recommitted the blunder by ordering a similar decree to be entered without examination.

The doctrine of comity is a most salutary one, and while it has, in many instances, been carried too far, it should be preserved in its purity. All litigants are entitled to a hearing in all cases, but in my opinion, the great benefits resulting from uniformity of decision require that a well considered pronouncement by one branch of the *nisi prius* Federal court, no matter where held, and even on a motion for an injunction *pendente lite*, should be determinative upon the questions presented both of law and of fact, in the absence of a different and determinative showing, until reversed upon appeal.

In conclusion, I want to repeat, in his words, as closely as I can recall them, a sentiment expressed many years ago by Judge Blodgett, which was to this effect:

"The low estimate placed by the public upon the judicial mind is lamentable, and still more lamentable is the estimate placed upon the judicial mind by many members of the Bar."

Let me add to this sentiment, and in all seriousness, that the solemn demand from the high chancery of Heaven, as to its decrees, as to obedience thereto and as to just and righteous interpretations thereof, is not greater than the obligation resting upon the members of the Bar rightly to interpret and add unto the *evenness* and the *righteousness* of the decisions of our courts.





THE CONDITIONS UNDER WHICH PRELIMINARY  
INJUNCTIONS IN PATENT CAUSES SHOULD BE  
GRANTED OR REFUSED.

BY

FREDERICK P. FISH,  
OF BOSTON, MASSACHUSETTS.

In the admirable paper on certain recent changes in the construction and application of the patent laws read by Judge Lysander Hill before the Patent Law Association, at Chicago, on the tenth day of June, 1899, Judge Hill calls attention to the fact that up to recent years it was the custom of the courts of the United States to grant preliminary injunctions, where the infringement was clear, with much greater freedom than has been the case of late. He also points out the serious consequence of what may be said to be the present rule, in so far as there is any rule governing the granting or refusing of such injunctions.

We all know that, as the patent law is now administered, a patent which should secure to the patentee for the term of seventeen years the exclusive right to make, use and vend the invention for which the patent is taken, is practically inoperative until it has been sustained at final hearing in a contested case. During the progress of the litigation, which in many instances is protracted with great ingenuity by the infringing defendant, the patentee is practically helpless, and when at last his patent has been sustained by the adjudication of one of the nine circuit courts of appeal, it is frequently the case that there are very many infringers throughout the United States who may have made a substantial investment in a business depending more or less on the manufacture, use or sale of infringing apparatus, or the use of an infringing process. All of these infringers are bound by considerations of self-interest to resist

the rights of the patentee to the extent of their power and their power to embarrass the patent owner is very great.

A decision in favor of the patent in such a contested case theoretically establishes the validity of the patent and, to some extent, its scope; and it has been generally recognized that the patentee who has succeeded in such a litigation is thereafter entitled to a preliminary injunction, not only in the circuit in which the patent was sustained, but, by the rule of comity, in other circuits also. He may, therefore, proceed to enjoin not only manufacturing infringers, but also users who have put into use a contrivance publicly and commonly sold in the market for many years, or a process upon which the entire business of such users depends. But it is by no means certain that the patentee gains anything by his first victory. Every defendant, in a subsequent suit, has the legal right to make his own defense. If he is able to meet by a new defense the affidavits of the patentee who is seeking to get a preliminary injunction against him, he may defeat the motion, and thereby deprive the patentee of all the benefits of his first victory, leaving the patentee no alternative except to proceed to final hearing in the new case.

It is quite possible that a patentee who exercises the utmost diligence may never find himself in a position where his patent will be of value to him; for one infringer after another may succeed in advancing new defenses which will prevent the issue of preliminary injunctions, so that the term of the patent may expire before it is so established as to afford what we all know to be the only practicable relief to a patentee, namely, an absolute right to stop an infringer without waiting until the final hearing of the cause, which the patentee may not be able to get for years.

We all know that there have been many cases in which a patent of great value, and which was ultimately sustained against all the innumerable defenses that were raised against it, has been only a source of expense and annoyance, and not in any way a protection to the patentee, until many years of its life had expired.

Moreover, in one circuit at least, the rule of comity is apparently to be ignored; so that it would seem that in this circuit, which covers a territory in which manufacturing interests have been developed almost to a greater extent than in any other part of the United States, a patentee who has succeeded in establishing his patent in another circuit is to be treated as if his patent had not been sustained. It hardly seems possible that the doctrine of comity should be generally ignored; but if it is not to be recognized in all the circuits as of practically controlling importance, the situation of a patentee will soon be even more intolerable than is the case at present.

The courts also require of the patentee due diligence in the enforcement of his rights, and if he is guilty of laches, feel bound at least to deny his application for a motion for a preliminary injunction. This principle is absolutely sound; but it is, of course, in many cases impossible for a patentee to pursue all who infringe his rights, and while it is generally recognized that activity in litigation against others rebuts the presumption of laches arising from delay in any particular case, indications are not wanting that the hardship to a defendant of granting a preliminary injunction against him which will prevent his using a machine or process which he has had in use for many years, or prosecuting a business which he has for a long time been carrying on in defiance of the patentee, sometimes appeals to a court so strongly as to impose upon the patentee another serious burden in his effort to make out such a case in equity as will entitle him to a preliminary injunction.

Theoretically, the situation is intolerable, and we must all agree that practically the patentee by no means gets that protection which the constitution and laws of the United States were framed to give him as a reward for his contribution to the progress of the useful arts.

But there is another side to the question, that is equally serious.

There can be no doubt that the patent system was established primarily for the benefit of the public, and for the benefit

of patentees only in so far as benefit to them results in advantage to the public.

Under the law as at present administered, the public is at a serious disadvantage. The individual users of machinery or processes or articles of manufacture that may be the subject of patents, are entirely unable to pass upon the question whether or not a patent that is alleged by the patentee to control a certain machine or process is valid, or has in fact, the scope for which the patentee contends. Even competent counsel fail to agree upon such questions, and an alleged infringing manufacturer is just as strenuous in his assertion that the users of the articles made by him will not infringe the patent, as is the patentee in asserting that his patent will ultimately be sustained so as to enable him to pursue all users as infringers.

It may well be that an intending purchaser prefers the alleged infringing contrivance for some entirely good reason, such as, for example, that the article or machine in question, as made by the alleged infringer, is of better design or better adapted to the user's needs, or that it is offered to him at a substantially less price.

Under these circumstances it is a great hardship that a user should be forced by the situation either to buy of the patentee an article that he does not want, upon terms that are not satisfactory to him, or to buy of the alleged infringing manufacturer, with the risk of ultimately being called to account by the patentee. It is all very well to talk as the courts sometimes do of the user's taking his chances. It is not right that he should be forced to take such chances; and a system of administration of the patent laws is to be condemned which imposes upon him any such necessity, unless no better system can be devised.

I believe that without any change in the patent law, and without departing in the slightest degree from the principles which govern courts of equity in the administration of these laws, it is possible to avoid many of the evils, both to patentees and to the public, to which I have called attention, provided

only that the courts will look the situation squarely in the face, and in exercising their discretion to grant or withhold a preliminary injunction, will regard the matter from what, with all deference to the many expressions of judicial opinion to the contrary, some in one direction and others in another, I cannot help regarding as the true point of view.

In so far as there are any definite rules of law governing the grant or the refusal of a motion for preliminary injunction in patent cases, I recognize that I am about to suggest that the courts should depart to some extent from some of those rules. I contend, however, that by departing from them and approaching the matter from another standpoint, they will act in greater harmony with the spirit and letter of the patent law, and also with the fundamental principles which the courts of equity were established to enforce and apply, than is the case at present.

By the terms of the patent law there is conferred upon the patentee the exclusive right to make, use and vend that which he has described and claimed in his patent. He is entitled to protection in this right.

He is entitled to protection by way of injunction whenever his right is infringed, under the authority of Section 4921 of the Revised Statutes, which provides that "the several courts vested with jurisdiction of cases arising under the patent laws shall have power to grant injunctions according to the course and principle of courts of equity to prevent the violation of any right secured by patent, on such terms as the court may deem reasonable."

The conditions under which, in general, courts of equity will grant preliminary injunctions are familiar to you all. If the right of the complainant is clear, and he needs an injunction for his protection, one will be granted at the beginning of the suit to hold matters *in statu quo* during the litigation, in nearly all cases, whether of contract or tort, in which the existing condition of things might be disturbed during the litigation to the complainant's disadvantage if the preliminary

injunction were not ordered, unless there is some special and controlling reason to the contrary.

The situation of the defendant is, however, always considered, and if it appears that the importance to the complainant of the grant of an injunction is small, and the injury that may be done the defendant, if the preliminary injunction is granted, is likely to be serious and irreparable, the court usually will not order the injunction *pendente lite*, except in an extreme case.

On such general lines have courts of equity always acted, and, while the eccentricities of any particular tribunal may have led sometimes to an improper exercise of discretion in granting or refusing a preliminary injunction, generally speaking there has been no substantial injustice resulting from the exercise of this branch of equitable jurisdiction.

I believe that if the courts would ignore to some extent the artificial rules that have been developed in connection with applications for preliminary injunctions in patent cases, and would apply the simple principles that always have been and are to-day invoked in other classes of cases, the results would be in all ways satisfactory.

If the complainant's right is clear and the defendant's violation of that right is clear, why should a court refuse a preliminary injunction in a patent case, if one were sought the day after the patent is granted? Why should it insist that such an injunction should never be granted, until years of the life of a patent have been sacrificed in the litigation necessary to establish it at final hearing? Why should the age of a patent, or the fact that it has or has not been the subject of litigation, be given in and of itself any controlling importance? Of course, such considerations would incidentally influence the mind of a court, but why should they relieve the tribunal of all responsibility, so that the merits are not to be considered, but the injunction refused, if the patent is new and has not been sustained? . A rule that arbitrarily prevented the intervention of the court on the complainant's behalf at the beginning of

the suit would be intolerable in any other class of cases, and it seems absurd and unreasonable in patent cases.

On the other hand, why should the fact that a complainant has sustained his patent at final hearing be in and of itself enough to require the grant of a preliminary injunction against an infringing user who is greatly damaged and may be ruined by the granting of an injunction, in cases where the defendant has shown no bad faith, and been guilty of no unfair conduct, and where the complainant can show no continuing injury and no damage to him because of the continuance of the particular infringement complained of in the bill? But we all know that such injunctions are granted not infrequently, with the effect either of embarrassing the defendant in the conduct of his business without any corresponding advantage to the complainant, or of forcing the defendant to make a settlement with the complainant on terms which the defendant regards as unreasonable. In no class of cases except those brought under Letters Patent would preliminary injunction issue under such circumstances. In fact, an injunction even at final hearing is rarely granted in cases other than those brought under Letters Patent, where the complainant does not need it for his protection, and where the defendant will be greatly injured by the injunction.

I believe that no more important or effective reform in the administration of the patent law could be instituted than one which would result in the grant of preliminary injunctions in patent cases on precisely the principles on which they are granted in other cases.

If such general principles were applied in patent cases, a preliminary injunction would be granted wherever the right of the patentee was clear and he needed such an injunction for his protection, unless the consequence to the defendant of granting an injunction would be so serious as to make it inequitable to grant such interlocutory relief.

A manufacturing infringer, one who makes and sells an article or machine which in itself or in the environment in

which it is to be used, infringes a patent, is always causing irreparable damage from day to day to a patentee, among other reasons because he is continually competing with the patentee and creating a constantly growing class of infringing users, all of whom will violate the rights of the patentee. No one could contend for a moment that the complainant in a case against such an infringer, did not need an injunction as the only way in which matters could be maintained *in statu quo* during the progress of the litigation. In the case of a manufacturing defendant it seems to me clear that the courts should grant a preliminary injunction wherever there appeared to be no serious question as to the validity of the patent, no reasonable doubt as to infringement, and no defenses that were probably valid.

In like manner an infringer who is using a machine for the manufacture of articles which are freely sold in the market, is every day causing irreparable injury to the owner of a patent, the inventions of which are embodied in that machine. He is from day to day wronging the owner of the patent by an active and continuing competition from which the patentee, if his rights are clear, should certainly be protected. There are many other forms of infringement in which, in the absence of any special circumstances and merely because of the particular acts of the defendant who is sued, a patent owner is wronged irreparably by the continuing infringement, and certainly requires protection and should have it at the earliest possible moment.

Leaving out of consideration any special equities (such, for example, as that the patent owner himself is not manufacturing, or has established a royalty which makes it for his interest that as many machines as possible, embodying his invention, should go into use; or a special situation such as sometimes exists on the part of the defendant, which would make it inequitable that he should be enjoined,) why should the patent owner, if his right is clear, not have the protection of an injunction as soon as the right is violated?



I respectfully submit that he should have this protection in all such cases.

At the other extreme are the instances in which the infringement is by the use of an invention of such a character that its continuing use does not injure the patent owner at all. For example, the continuing use of a watch, or garment, or carriage, or locomotive, or tool, cannot in many instances be said to do the patent owner the slightest injury. He was injured by the manufacturer who made and sold the article. It may be said that the user himself injured the patent owner when he purchased the article of the infringing maker instead of getting it from the authorized manufacturer. It cannot reasonably be contended, however, that the patent owner is substantially injured by the *continuance* of the use, except, of course, in those cases in which the patent owner is himself a user, making his profit by monopolizing the use of the invention. I shall not turn aside to consider this class of cases.

On what principle should a court of equity grant a preliminary injunction, or in fact any injunction, against such an infringing user? I know of none and believe that in granting such injunctions the courts are departing from the principles and general rules which are at the basis of this branch of the jurisdiction in equity. Do they not, in fact, grant preliminary injunctions in such cases, not because the complainant requires that relief for his protection, but because there seems to be no other way of dealing with the situation so as to give any other and adequate redress to the patentee? Damages should be an adequate compensation to the patentee for the violation of his right by such users; but the rules governing the collection of damages in patent causes are so strict (necessarily so, perhaps) that as the courts well know it is often worse than useless for the patentee to ask to have them applied. He can get nothing, as a rule, by an accounting, except expense, annoyance and disappointment.

To be sure, by granting preliminary injunctions in such cases, the courts aid the owner of a patent in forcing settle-

ments, but this is not legitimate, and no court of equity would for a moment acknowledge that it applied its extraordinary powers for any such indirect purpose.

Again, the fear that he may ultimately be enjoined deters a customer from purchasing a machine which is alleged to infringe a patent. No one can complain of this if the patent is in fact good and the machine really infringes it. But how about the contrary case, where the patent is not valid or the machine is not an infringement? Are not users equally deterred by fear of an injunction, in many such cases?

In any event, it is not the business of courts of equity to employ their processes for any such purpose. It is their duty to protect by injunction those vested rights which are entitled to protection; not to frighten users of machinery into purchasing the apparatus of one manufacturer rather than another.

We all know of many cases in which the owner of a patent has been grievously wronged, and some in which he has been ruined, because he could not get from the courts that prompt protection in his rights which the situation demanded. Do we not know a like number of cases in which a lawful manufacturer, undertaking to make a machine which, as the courts subsequently decided, he had a perfect right to make, was equally wronged and in some cases ruined, because of the threats of a patent owner whose patent did not really cover the machine, but who, by advertising and by bringing suits which could not be heard for years after they were brought, frightened the public so that they would not buy the machine of the defendant? And what frightens the user the most is the chance of being enjoined after the investment has been made and the machine charged to be an infringement put into use.

In my opinion, hard as is the condition of the owners of patents, the situation of honest and honorable consumers who have no interest in the fight between rival manufacturers, is more grievous, for while they are anxious to respect all rights that patent owners really have, they do not wish to be excluded,

by fear, from conducting their lawful business in their own way : and yet they are helpless.

Equally hard is the condition of an honorable manufacturer, who is advised and believes that he has the right to make and sell a certain contrivance in spite of some patent or the other upon which he is threatened, and who knows that if he defends the suit brought against him or one of his customers on that patent and wins it, he will not only suffer the cost and annoyance of the litigation, but will have his business thoroughly demoralized and his customers frightened away because of the fear inspired by the litigation while the same is pending.

Can anything be done to correct these evils, in part at least ?

It seems to me clear that the conditions of patent litigation would be enormously improved and the interests both of patentees and of the public greatly advanced if courts of equity would go back to first principles in the exercise of their discretion as to the granting or refusing of preliminary injunctions. Let them adopt the simple rule that wherever the complainant's right is clear and he needs a preliminary injunction for his protection, one should be granted unless there is some controlling equitable consideration to the contrary. On the other hand, no matter how clear may be the complainant's right, let the preliminary injunction be refused, if the complainant does not need it, or, in other words, if the continuance of the infringement during the progress of the suit will not do the complainant substantial harm.

This rule would involve the granting of a preliminary injunction in almost all cases in which the complainant's right was clear and the defendant was a manufacturer of the infringing contrivance, or was using an infringing contrivance or process for the continuous production of articles to be sold, and the complainant was himself a manufacturer or the licensor of manufacturers making or employing the invention complained of. It would involve the grant of the preliminary injunction, if the complainant's right was clear, in a suit brought by the owner of a patent who himself used the invention or licensed

its use for the purpose of producing articles to be sold, in cases where the infringing defendant was a competitor in the manufacture of such articles. In those cases and in others which I will not stop to consider, every act of infringement wrongs the complainant, and the continuance of the infringement from day to day is sure to wrong him irreparably, within the meaning of that word in law.

If injunctions in such cases were freely granted, the meritorious patentee would receive the best protection that can be given him under any system of jurisprudence that can be conceived of, for the infringer would be enjoined promptly before he could do the patentee much harm.

The public would be tremendously benefited if such preliminary injunctions were granted freely where the right was clear, for no manufacturer would be allowed to remain in the field urging them to purchase his goods, assuring them that his counsel, the best in the land, advised him that he was sure to defeat the patent, and asserting that the suit against him was dishonestly brought, and that his customers might feel certain that they would never be called to account; and there would never come to the customer the day of reckoning that now not infrequently, when it comes, bears so hard upon the really innocent infringer that he resents the very existence of the patent system and for the rest of his life would destroy it if he could.

Moreover, in many cases the infringing manufacturer himself would be vastly better off if he were enjoined at the beginning of the suit. He rarely believes that he is infringing. He proceeds with enthusiasm to develop his business. He sells as many goods as he can, giving his customers guarantees and promises of protection, and at the end of the litigation, when he is beaten, he finds that the whole structure to the building of which he has given such pains and energy, topples about his head and that the net result of his years of effort is a distinct and often a deplorable loss.

If he had been enjoined at the beginning of the suit, he would have been saved this bitter experience and would have turned his energies into some safer channel.

What is the advantage of waiting until final hearing before an injunction issues? Theoretically it resides in the fact that the court may be better informed and thereby more certain of the accuracy of its decision if the cause has dragged along four or five years through the mazes leading to final hearing, than would be the case if the decision were made on the *ex parte* record upon which motions for preliminary injunction are generally decided.

I do not believe that this is true of one patent case in ten. On the contrary, I have no hesitation in expressing the view that in the vast majority of patent cases the substantial issues involved can be presented to the court just as clearly and effectively on a motion for a preliminary injunction as at final hearing.

This would not be true of cases turning upon a defence of prior use or any other like defence involving the testimony of a number of witnesses as to matters of fact. But in what proportion of the cases brought to trial are such defences seriously presented?

Almost every patent case turns solely on questions of law and expert questions such as the construction of the patent, the relation of the patented invention to prior patents and publications and the fact of infringement. All these questions can certainly be presented in affidavits as effectively as under the cumbrous proceeding of the rules of practice in equity in the courts of the United States. In dealing with such questions, cross-examination rarely counts for much.

To my mind it is absurd to suppose that a court could not, in most cases, upon affidavits and at the beginning of the cause, decide whether or not the complainant's right was clear. If it should not come to the conclusion that his right was clear, the only consequence would be that the complainant would have failed to sustain the burden that was upon him, the injunction

would be refused and the case would be sent to drag its weary length to final hearing, as in all cases under the present system. In many cases, moreover, the decision against the patent on a motion for a preliminary injunction would satisfy the complainant that he had no case and would practically end the litigation, and in like manner, if the patent were sustained on the merits and the preliminary injunction granted, the defendant would often conclude that he was wrong, and acquiesce finally in the result.

Every instance in which the court found itself able to determine that the complainant's right was clear enough to authorize the grant of a preliminary injunction would be so much gain to the community and to the patent system.

It would be almost equally advantageous if the court should decide definitely at this stage of the case that the patent was bad or that the defendant did not infringe.

I see no reason why the courts, if they chose so to do, could not on motion for preliminary injunction pass on the merits in almost all cases where the issues were technical and depended upon the construction of written instruments and the comparison of mechanisms, so definitely and positively as to make it very certain that their views would be the same at final hearing. If the defendant were to show that there was a real issue of fact, a court would naturally deny the motion on the ground that, as to such testimony, cross-examination was vitally necessary. In a proper case, the court might even order witnesses to be produced for cross-examination as to the statements contained in their affidavits.

I cannot help feeling that if the courts would deal vigorously and directly with the merits on motions for preliminary injunctions, without regard to the age of the patent or to the fact that it had not been sustained at final hearing, granting the injunction if the right were clear, and, if it were reasonably certain that the defendant should prevail, saying so in plain terms, it would be only a few years before patentees and the

public generally would be far better satisfied with the administration of the patent laws than they are at present.

As a corollary it would, I think, follow, if courts were to deal with motions for preliminary injunction on the lines above suggested, that users of machines alleged to embody the inventions of patents adversely held, would be substantially protected against the very serious dangers and uncertainties to which they are now exposed.

In the first place there would not be so many users of devices that really infringed, if manufacturers were promptly enjoined against infringing. If, however, in any given case against a manufacturer, the preliminary injunction was refused, that consideration should, I think, be regarded by the courts as excusing a user to some extent from the consequences of having purchased a machine made by the defendant manufacturer whom the court had refused to enjoin. If a court has investigated the question on the merits and found that the patentee's right is not so clear as to justify the grant of a preliminary injunction which will maintain things in *statu quo* during the progress of the litigation, it would be unreasonable ever thereafter to issue a preliminary injunction against a user who purchased from the defendant manufacturer after the refusal of the preliminary injunction and prior to the final hearing of the cause against him, except in the cases in which as a matter of fact and not of mere words, the continuing use is an irreparable injury to the owner of the patent.

If patentees could be sure of a full hearing and decision on the merits on motions for preliminary injunction against the manufacturers who infringe their patents, they could readily submit to the introduction into the law of the principle that if they fail to get a preliminary injunction, the customers of the manufacturer whom the court had refused to enjoin preliminarily, should themselves not be enjoined *pendente lite*.

Throughout what I have said I have been dealing almost wholly with honest patent owners and honest infringers: of whom there are many. I think that you will agree with me that

the principles for which I contend would fit almost equally well the case of dishonest patentees and of dishonest infringers.

If a patentee knew that he had no case and brought his suit merely to embarrass a competitor or to deceive the public, he probably would not dare to move for preliminary injunction. If he did make the motion he would surely be defeated. If he failed to make the motion, the consequences to him, to the defendant and to the customers should be the same as if he had made the motion and failed. In any event, if a complainant knowing that a motion for preliminary injunction would be seriously considered on the merits, failed to make such a motion against an alleged infringing manufacturer, he would be, and should be, tremendously prejudiced by his failure so to do, and I believe that the courts and the public would soon get into a frame of mind in which the refusal or neglect of the complainant in such a suit to move for a preliminary injunction, would be tantamount to a confession that he had no case and that he would be treated accordingly, throughout the course of all subsequent litigation on the patent for the same alleged infringement.

In passing, I will say that until, by the terms of the Court of Appeals Act as amended, provisions were introduced into the law allowing a prompt appeal from the decision of a Circuit Court granting or refusing a preliminary injunction, it might not have been safe for the courts to have dealt with the final rights of the parties on motion for preliminary injunction in patent causes, as firmly and positively as I would have them do. Under the old system the error of a single judge in deciding such a motion, could not be corrected by appeal until after the proofs had been taken, final hearing had and a final decree entered. It may be that the existing rules as to preliminary injunction in patent cases, which seem to me artificial and almost inconsistent with the general rules of equity on the subject, were necessary where no appeal could be taken for years and an error of the court at the preliminary stages of the case was practically incapable of correction.



Under the present conditions, however, when an appeal can be taken immediately and is sure to be decided in a few months, and particularly in view of the general practice of suspending injunctions, if the case is at all doubtful, until the decision of the Appellate Court, I feel very certain that there would be no failure of justice if the courts should deal with motions for preliminary injunction as I would have them deal with such motions.

If the courts were to approach this subject from the point of view above suggested, they would be obliged to reform their procedure on motions for preliminary injunction. It would be impossible for them to determine that a complainant's right was clear unless the defendant had had ample time to meet the allegations of the complainant's affidavits; moreover, the complainant should have ample time to reply to the defendant's affidavits. By rule, in the first circuit, and by the practice in some others, the issues on a motion for preliminary injunction are now made on just this plan, and at the hearing the court is in a position to do substantial justice between the parties. Such a practice as that prevailing in the first circuit would be entirely adequate for the condition of things which I should like to have brought about, when carried out and applied so as to insure that each party had a reasonable, but not excessive, time for the preparation of his case.

In other circuits, however, in which, under the present practice, the defendant may be brought into court on a few day's notice to answer a long series of affidavits on a complicated matter, and the complainant knows nothing of the defendant's position until the defendant is making his argument at the hearing of the motion, the procedure would have to be substantially reformed before it would be possible for the courts to deal with the merits of the case, on motion for preliminary injunction.

I do not wish to close without calling attention to an incidental advantage of great moment which I think would attend the change in the attitude of the courts in dealing with motions for preliminary injunction which I am advocating.

At the present time the length of the records and the time consumed in preparing patent cases for final hearing are so serious a blemish upon the administration of the patent law as to bring the administration of that law into disrepute and greatly to disturb all of us who believe in the importance and value of the patent system. These evils cannot be entirely overcome except by reforms in procedure too radical to be considered, but if preliminary injunctions were granted freely wherever the right was clear, and if refused, refused as frequently as possible on the merits and for no other reason, I believe that there would be, incidentally, a great reduction in the length of the records and the amount of time spent in taking testimony in patent cases.

As it is now, if the complainant in a patent suit thinks that he has a good case he may be anxious to push the matter through to final hearing as rapidly as possible, although even then the commercial advantage of *lis pendens* is so great to him that he may feel inclined to postpone the day on which his rights must be finally determined, in view of the present satisfactory character of his position.

If, however, he has no great confidence in his case, he naturally delays the final hearing all that he can, preferring to postpone the day on which his patent may be publicly declared to afford him no protection and to be no embarrassment to his competitors.

If the spirit and attitude of the courts were such that the complainant was practically forced to move for a preliminary injunction as soon as any one infringed his rights, if he has any, in such a way as to do him substantial harm, the main ground of controversy would be substantially settled by that motion. If settled in his favor, he would, I think be encouraged to proceed to final hearing as rapidly as possible, or at any rate as rapidly as would be the case under the present system. If he were beaten on the motion, he would know, if the matter worked out as I think it would, that the customers of the defendant would not be exposed to the danger of a preliminary injunction,

that not having that danger to fear, the public would buy quite freely of the defendant and that his only protection would be to get, if he could, a decision at final hearing as soon as possible. The same condition of things would exist if he did not make a preliminary motion for injunction. In that case also the fact that the public would no longer have to face the danger of a preliminary injunction if they bought of the alleged infringing manufacturer, would make the mere pendency of the litigation of so small value to the complainant that he would be urgent to get to final hearing as his only resource.

The defendant, on the other hand, at the present time, if he succeeds, as he sometimes does, in overcoming the dread of the public so that they will purchase of him in spite of the fact that he is sued as an infringer, has every inducement to delay the progress of the cause to final hearing and frequently does delay it unduly.

If, however, he were under an injunction at the beginning of the suit, he would, unless he went out of the infringing enterprise, as would be the case in many instances, have every inducement to speed the cause, for his hands would be tied until after the decision at final hearing.

If the injunction were refused, its refusal would, in ordinary cases, be so plain an indication not only that the complainant's right was not clear, but that it could not be made clear, that the defendant would have every inducement to co-operate actively with the complainant to close up the litigation as soon as possible. And as already suggested, it is even probable that in many cases, the parties would be satisfied that the court, on final hearing, would not depart from its conclusions on the motion for a preliminary injunction and that the whole controversy would come to an end with this preliminary proceeding.

On the whole, I am satisfied that causes would be speeded if the tests for the grant or refusal of a preliminary injunction were merely whether or not the complainant's right was clear and he needed such an injunction for his protection.

It may be argued that much of what I have said with reference to preliminary injunctions applies equally to the grant of injunctions at final hearing in patent causes. There would be some truth in such a suggestion, but none the less the conditions at the end of the cause are in many respects different from those at the beginning and it does not seem to me that the validity of the views that I have expressed is at all affected by any inferences or analogies which might be drawn from them as to the rules which should be applied by courts of equity in granting or refusing injunctions at final hearing.

In these unsatisfactory notes I have done nothing more than call attention, somewhat vaguely, to a subject which I believe to be entitled to thought. I shall be gratified if the members of the Patent Section of the American Bar Association give it consideration. The present rules governing the administration of the Patent Law are certainly not in all respects satisfactory. It may be that you will agree with me that, among other things which might be modified to advantage, are certain of those rules governing the granting or refusing of preliminary injunctions which are in a way peculiar to patent causes as distinguished from other classes of cases in which the strong arm of the courts of equity is invoked to prevent a wrongful act or the continuance or repetition of a wrongful act.

# OBITUARIES.

## DISTRICT OF COLUMBIA.

### ALEXANDER THOMPSON BRITTON.

Alexander Thompson Britton, son of Alexander Britton and Susan Towers, was born in New York City, December 29, 1835.

At the age of eighteen he entered Brown University, Providence, Rhode Island, where he graduated in 1857.

Adopting law as his profession, he studied in the offices of Judge John T. Brady and Nathaniel Jarvis, in New York, and at the Harvard Law School.

A few months after his graduation he was admitted to the Bar of the Supreme Court of Rhode Island, and began practice in that state. He removed, in 1860, to Madison, Florida. His vehement Unionism and fearless proclamation of his sentiments compelled his return to the North, and the outbreak of the Civil War found him in Washington.

Among the first to offer his services to the government and as a musket-carrying member of the "National Rifles," he marched across the Long Bridge in the advance guard when Burnside's army crossed into Virginia.

He settled permanently in Washington in 1864, and organized the law firm of Britton and Gray. He was recognized as an expert upon the subject of land titles, and in 1877 was appointed by President Hayes as one of the two civilian commissioners to codify the public land laws. The result of his labors, a codification in three volumes, has been many times republished by Congress, but has never been revised.

The firm of Britton and Gray soon ranked among the most successful in Washington ; its senior member was an acknowl-

edged leader upon questions of the settlement of public land titles.

It is impossible to give here more than a brief outline of Alexander T. Britton's character, abilities and achievements. He was greatly interested in the prosperity and material advancement of Washington, his adopted home, and any project tending to these results was sure of an ardent, eager supporter in him. By reason of his reputation for the strictest integrity and his acknowledged financial and executive ability, he was largely sought in the promotion and organization of enterprises, and many of Washington's most successful ventures owe their prosperity to the energy and wise guidance of this many-sided man.

He was the President of the Atlantic Building Company; Member of the Board of Police of Washington, and its last President appointed by President Grant; a Director of the Georgetown & Tennallytown Railroad; a Director of the Eckington and Soldiers' Home R. R., and a Director and Vice-President of the Columbia National Bank; President, Vice-President, Chairman of the Executive Committee and Director of the American Security and Trust Company; a Trustee of the Emergency Hospital; a Director of the Columbia Fire Insurance Company; a Trustee of the Tunlaw Heights Syndicate (for improvement of Georgetown Heights property); chairman of the committee having in charge the inauguration of President Harrison; a Director and the General Counsel of the Norfolk and Washington, D. C., Steamboat Co.; a member of the Board of Trade and its General Counsel, also the chairman of its committee to secure the codification of District Laws; a Trustee of the Protestant Episcopal Cathedral Foundation and chairman of its Building Committee; a Charter Member of the Society of Sons of the American Revolution of the District of Columbia; a commissioner to the Columbian Exposition from the District of Columbia; chairman of the Executive Committee on Awards of the Columbian Exposition, and a Trustee of the New York Avenue Presbyterian Church.

He died at his home in Washington, on July 7, 1899.

## REGINALD FENDALL.

Reginald Fendall was born in the City of Washington, on the 6th day of March, 1845. His father, Phillip Richard Fendall, was a distinguished member of the old bar of Washington and a native of the District of Columbia, having been born in Alexandria soon after its cession by the state of Virginia. The elder Fendall was, as gentleman, scholar, and lawyer, such a model as the hurry and struggle of our later days can hardly produce, and this courtly gentleman seems to have furnished for his son Reginald the standard towards which he himself strove, fitted by inherited qualities and impelled by filial piety. With such a head, it was to be expected that the home would be peopled by a cultivated family, and ruled by the beneficent influences of learning and courtesy, illumined by taste and wit and humor.

From such surroundings, Reginald Fendall came to his books at school and college, already equipped in mind and intuition with much which characterized him in after life, and which it is difficult to acquire outside of such a home.

In 1864 he graduated first in his class at the Columbian College, and in 1865 received a master's degree. Studying law under his father, and attending the lectures of the Columbian Law School, he took the degree of LL.B. in 1867, and was admitted to the bar on May 6th of that year; so that, when his father died, in 1868, a worthy son was already prepared to follow in his footsteps. He died in New York City on the 22d day of February, 1898.

After a life-long residence in his native city, and a career of more than thirty years at the bar, Reginald Fendall, as man, citizen, and lawyer, leaves a record to be envied. Handsome and distinguished in person, dignified, graceful and affable in manner, he was withal modest and unassuming, with ready sympathies, a keen sense of humor, and a refined and cultivated taste in literature and art. He was solidly grounded in his profession, and showed marked legal ability in many

important causes; yet his disposition, as well as the public-spirited and active part which he took in many organized charities, tended to keep him aloof in his later years from the daily controversies of the forum. But the bereaved clients who for years relied upon his sound judgment, his safe counsels and remarkable business ability, attest what important and responsible duties of our profession he has continually discharged; while the courts of his city, and the Supreme Court of the United States, recognized in him, whenever he appeared, the accomplished and clear-headed lawyer, with the ability to grasp the real points of his case, and the gift to state and argue them without prolixity or obscurity. With his modesty and urbanity went no shadow of weakness or lack of decision, but on the contrary, the "*fortiter in re*" was an essential part of his nature, necessary to his own self-respect and commanding the respect of others.

In all his relations, in his family, at the bar, in his friendships and in the community, he was loyal, true and upright; generous, charitable and considerate.

#### AUGUSTUS HILL GARLAND.

Augustus Hill Garland was born near Covington, Tennessee, June 11, 1832. A year afterwards his parents removed to Hempstead County, Arkansas, where his father soon afterwards died. At an early age the son was sent to St. Mary's College, near Lebanon, Kentucky, where he remained for one session, after which he attended St. Joseph's College, at Bardstown, in the same state, where he received the degree of A. B. in 1849. Returning home he taught school for some months; and studied law until 1851, when he went back to St. Joseph's and there he received the degree of A. M. in July, 1852.

Mr. Garland was admitted to the bar at the close of 1852, and began practice in Washington, the county seat of Hempstead County. Having obtained a local reputation as a successful practitioner, he removed to Little Rock in 1856.



When the State Convention was called in 1861 to consider national questions then pending, Mr. Garland was returned a delegate as a Whig and a Union man, and as such he voted against a proposed ordinance of secession. The convention having adjourned without definite action, it reassembled after hostilities had actually begun, and the ordinance of secession was passed. Soon afterwards he was elected as a member of the Confederate House of Representatives; and before the close of his second term he was elected as a member of the Confederate Senate, a position which he filled until the close of the war, when he resumed the practice of his profession in Little Rock.

Mr. Garland was elected to the Senate of the United States in 1866; but, owing to the troubled condition of politics existing at that time, he was not allowed to take his seat in that body. He was elected governor of Arkansas in 1874; and served one term of two years. In 1877 he was again elected to the United States Senate, a position which he occupied until Mr. Cleveland became President of the United States in 1885, when he became a member of the cabinet as Attorney-General of the United States. At the close of Mr. Cleveland's first term as President, Mr. Garland opened an office for the practice of the law in Washington, and continued in practice there, confining his attention chiefly to cases in the Supreme Court of the United States, until the time of his death, which occurred suddenly while he was engaged in making an oral argument before that court, on the 26th day of January, 1899.

Mr. Garland was a man of upright and blameless character. Though he held many political positions, in which he acquitted himself well, yet his prime allegiance was to the law, which he always continued to study diligently even in the midst of other and most exacting vocations. From this circumstance, and from the naturally judicial turn of his mind, he was in no sense a partisan politician; and he often received the support of his political adversaries. He was a man of an agreeable

presence and of engaging manners; and through life he secured and preserved the friendship of many persons most worthy of esteem. Few men in the profession possessed a more thorough knowledge of the law, or were better fitted for practice in the courts.

## GEORGIA.

### NATHANIEL J. HAMMOND.

Nathaniel J. Hammond was born in Elbert County, Georgia, December 26, 1833, and died in Atlanta, Georgia, April 20, 1899. A graduate and life long friend of the University of Georgia, he was at all times the champion of higher education. A member and officer of the Methodist Church, he was from early youth a bright exemplar of Christianity. A lawyer by profession, he was for many decades in the front rank of the bar of his state and of the nation. A head of a family, he uniformly met the responsibilities and graced the amenities of the position of husband and father. An American citizen, he typified the high ideal he himself entertained, and in public and private life, through a career of nearly one-half a century, in the halls of Congress, in councils of state, in the forum of justice, in the affairs of private life, he faltered not in advocating the right and condemning the wrong, with sincerity, integrity and personal purity. He was absolutely incorruptible. He was severely candid. He was essentially just. His ability was unusual. His life and achievements stamped him as a scholar, a statesman and a patriot.

## INDIANA.

### JOHN A. FINCH.

John A. Finch was the son of Fabius M. Finch and Nancy Allen Finch. Fabius M. Finch, who was born in 1810, is still living, in the full enjoyment of health and unimpaired men-

tality. He is one of the oldest and most distinguished practitioners at the bar of the state of Indiana. The firm of Finch & Finch, composed of father and son and located at Indianapolis, Indiana, until the death of the subject of this sketch, was probably the oldest in continuous law practice in the state of Indiana.

John A. Finch was born November 15, 1842. He was educated at Franklin College and at Wabash College, and was a graduate in the class of 1863 of Wabash College. He had sufficient army service to know the hardships of that life, and came out of the war with a seemingly broken constitution. But the hereditary grit of the blood that tells was in him and he pulled through after a long battle, and did a man's work in life. He was under the burden of physical weakness and many serious illnesses, but the unquenchable and dominating spirit never failed. Because of his illness he became an extensive traveler, first in his own country and then in Europe. He was in every state and territory in the Union, and frequently crossed the sea, always with open eyes, always the true cosmopolite. Few men had as wide and desirable acquaintance among the people best worth knowing. He was at home in any circle and always the center of the circle. He was wit, humorist, raconteur. His stories had a Lincoln-like aptness. His fund of illustration seemed inexhaustible. He always hit the point, and what was most remarkable, he never repeated himself.

As a lawyer, he was best known in the law of insurance. He was interested in more insurance cases than any man of his time. In a recent address he said he had been interested in the trial or settlement of litigated insurance cases in nearly every state of the Union. He had for more than ten years issued annually a Digest of Insurance Cases. These volumes cover all the decisions of the English-speaking courts. Their preparation required him to have in his office every current law report and every law journal published in the English lan-

guage. This practically added a library every year to his burdened shelves.

Mr. Finch was never married. As a reason for this he said that he had "never had time." He had a warm attachment for his friends, and they were a host. His large income enabled him to gratify his constant desire to help others. No man was more impatient of the low, the mean and the sordid; no man more appreciated the true and the beautiful. He did not wear his heart on his sleeve, but no man ever had truer or stauncher friends. He was a club man in the best sense of the word; and in literary clubs he was easily at the front. He wrote readily and with force and directness. A man of wide reading, close observation, keen sympathies and cultured taste, he was at home with almost any subject. Few men have touched life at more points; college student, soldier, editor, newspaper correspondent, lawyer, traveler, club man, author and compiler, he adorned and honored every sphere, and each in turn has been enriched by him. He was always a gentleman, without fear and without reproach. No better could be said in a volume than that those who knew him best, best appreciated him and best loved him. While visiting St. Paul, Minnesota, he was taken suddenly ill on May 30, 1899, in his room at the Ryan Hotel, and died before help reached him.

For many years he attended the meetings of the American Bar Association and was conspicuous for his interest in its deliberations.

#### CHARLES B. STUART.

Charles Benedict Stuart was born in Logansport, Indiana, April 21, 1851, and died February 20, 1899, at his home in Lafayette, Indiana. He was a son of Honorable William Z. Stuart, the distinguished lawyer and jurist, whose name stands pre-eminent in the judicial history of the state of Indiana, and Sarah Scribner Benedict of Verona, New York. Judge William Z. Stuart was a native of Dedham, Massachusetts, a

suburb of Boston, and was born December 25, 1811. His parents were Dr. James and Nancy (Allison) Stuart, Scotch Presbyterians, who emigrated from Aberdeen to America. Charles B. Stuart's elementary education was obtained in the Logansport schools.

After preparing for college at Williston Seminary, East Hampton, Massachusetts, he entered Amherst College and graduated in the class of 1873 with the degree of Bachelor of Arts. He then attended Columbia Law School in New York, graduating therefrom with high honors in 1876. It was Mr. Stuart's intention to practice law in New York city and make it his residence.

On the death of Judge Stuart, May 7, 1876, Charles B. Stuart was appointed on the legal staff of the Wabash Railroad Company, a responsible position which his father had held for eighteen years, and to him was entrusted the duty of looking after the interests of this great corporation in Indiana. He devoted his life to this duty. He made the welfare of the road his study by day and by night. He brought all his energies to the protection of the company's interests, as it was his nature to do well whatever he undertook. The legal affairs of the road were so well managed that he continued in the capacity of legal counsel up to the time of his death, nearly a quarter of a century. He had a wide reputation of being one of the best corporation lawyers in the state.

Mr. Stuart opened his law office in Lafayette, Indiana, on January 2, 1877, having moved there from Logansport. In 1882, his brother, William V. Stuart, became associated with him. After the dissolution of the firm of Coffroth & Stuart, the firm was, on January 21, 1890, composed of the Stuart Brothers, Charles B., Thomas A. and William V. Soon death broke the link and removed Thomas Arthur, then in the prime of life. On August 23, 1892, Hon. E. P. Hammond became associated with the firm, and the law firm of Stuart Brothers & Hammond was as familiar to the court records of Indiana and in the United States courts as any in the west.

Mr. Stuart was a many-sided man, and was conspicuously interested in all educational matters.

For fifteen years he was one of the trustees of Purdue University, and for ten years was president of the Board of Trustees. He always took a great interest in Purdue. It was the child of his mature years and he saw its rapid progress with all the pleasure that the fond parent sees in the growth of a favorite son. He gave his time liberally to the cause of education and his influence was ever on the side of the right and against the wrong. He was a man of action rather than words. His opinions on all public questions were freely expressed, but his differences with men and measures were so courteous that one always left him with the feeling that his opinions were the result of mature thought and not of haste.

On December 20, 1876, he married Alice J. Earl, daughter of the late Adams Earl and Martha J. (Hawkins) Earl, of LaFayette, Indiana. His wife survives him.

Charles B. Stuart was one of the leading trial lawyers of Indiana and enjoyed the highest esteem of his brethren on the bench and at the bar. His clear, strong, noble personality was never submerged and lost sight of in the midst of professional work, but towered above it and shone through it. He was always more than a lawyer. He was first and foremost a true, genuine man.

#### ISAAC VAN DEVANTER.

Isaac Van Devanter was born in Delaware County, Ohio, May 28, 1821, and died at Marion, Indiana, November 26, 1898. He was the son of Jacob and Lydia Van Devanter, both natives of Pennsylvania.

Through his father, he was descended from the toiling, liberty loving Hollanders, and through his mother, from Scotch-Irish. Peter Van Devanter, his grandfather, rendered important aid in the Revolution by manufacturing gunpowder for the American army, and his father was a captain in the War of

1812. While Mr. Van Devanter was a child, the family migrated to Indiana and settled in Lagrange County, where, in the common schools, he received his elementary education. At the age of sixteen, he entered Lagrange Collegiate Institute, and remained about three years. He then attended for one year, the White Pigeon branch of the Michigan University. In these schools, he was distinguished for diligence and proficiency, standing high in all his classes. Soon after leaving the last named institution, he entered the office of Joseph Lomax, of Valparaiso, as a student of law, and subsequently read under the direction of Judge Nathaniel Bacon, of Niles, Michigan. Having thus completed his preliminary studies, he attended lectures at the Cincinnati Law School, from which he graduated in the Spring of 1848. Being in poor health, he did not commence practicing his profession until 1850, when, having been admitted to the bar in the early part of that year, he formed a partnership with Andrew J. Harlan, since a member of Congress from the Eighth District. This firm practiced law in Marion about three years. In 1855, Mr. Van Devanter entered into a similar relation with Hon. James F. McDowell, which lasted until 1875. The following year he formed a partnership with his son-in-law, Hon. John W. Lacey, and later, his son, Hon. Willis Van Devanter, became the third member of this firm, which stood in the first rank of the legal profession in Marion. In the year 1885, Hon. John W. Lacey was appointed Chief Justice of the Territory of Wyoming, and moved to Cheyenne, Wyoming. Hon. Willis Van Devanter, his son, decided soon after to locate in Cheyenne, and on the dissolution of the firm, Mr. Van Devanter retired from the practice of his profession to his farm adjoining the City of Marion and overlooking the beautiful Mississinewa River. Here he spent the remaining years of his life enjoying the fruits of his earlier activity.

In the legal profession, Mr. Van Devanter stood among the peers. By devoting all his powers to the law, his acquirements became extensive and his reputation enviable. He was

retained in the most important cases and for a number of years was attorney for what is now the Pennsylvania Railroad, and in the year 1871 was admitted to practice in the Supreme Court of the United States. Political honors were bestowed upon him in early life. In 1852 he was elected state Senator from the counties of Grant, Delaware and Blackford, and served four years, during which time he was a member of the Judiciary Committee, and the Committee on Organization of Courts, and on Elections. In the Civil War he was provost marshal of what was then the Eleventh Congressional District.

Mr. Van Devanter was a member of the Methodist Episcopal Church. He was married September 20, 1858, to Miss Violetta M., daughter of Jacob W. Spencer, of Marion, a prominent man in his day; and his widow and five children survive him.

Mr. Van Devanter was a gentleman of fine address and appearance, conversant with literary and scientific topics, and his moral character was without reproach. He was a man truly beloved by his fellow man, and when death claimed him he left many friends to mourn.

## LOUISIANA.

### THOMAS JENKINS SEMMES.

Thomas Jenkins Semmes, the ninth president of the American Bar Association, departed this life at his home in the city of New Orleans, June 23, 1899, at the age of seventy-four years. He was born in Georgetown, D. C., on the 16th day of December, 1824, and received his collegiate education at the Georgetown University. After graduation and a term of study in the office of Mr. Cox in Washington, he entered the Harvard Law School, and took the course of study which was then prescribed in that institution under the special instruction of such teachers as Judge Story and Prof. Greenleaf.



On the completion of this curriculum at Harvard, he entered into partnership with Mr. Walter D. Davidge in the city of Washington, and remained at the Washington bar until 1850. He was fond of the social life of Washington, and of practice there; but he felt that the conditions of the place did not offer the field he desired for his legitimate ambitions in public affairs. The plans of life he formed could not be carried out by a resident of the District of Columbia. He therefore removed in the fall of 1850 to New Orleans, and at once took a prominent position among the advocates and counsel of that city. He also engaged in the active politics of that day, in which the contest was extremely bitter, and in 1852 became a member of the Democratic State Central Committee. In 1855 he was elected a member of the legislature and framed and procured the adoption of election laws, which, though stoutly contested in the courts, were decided to be valid, and did much to prevent further disorder and outrage at the polls.

In 1858, President Buchanan appointed Mr. Semmes United States Attorney at New Orleans, and as such he entered with much zeal and ability into the prosecution of the filibusters who had been carrying on for some years their desperate raids in Nicaragua. Their leader, William Walker, sailing from Mobile, without a clearance, had been arrested at the mouth of the Mississippi. Mr. Justice Campbell of the Supreme Court of the United States went specially to New Orleans to try the cases at circuit. But in spite of Mr. Semmes brilliant prosecution, Walker was acquitted; only however to sail the next year to Honduras on a similar expedition in which he was captured and shot. During 1860 and the early part of 1861, Mr. Semmes held the office of Attorney-General of Louisiana. In 1861 he was elected a member of the Louisiana Convention which had been called in view of the question of secession, and was chairman of the committee that prepared the ordinance by which Louisiana undertook to withdraw from the Union. In November, 1861, he was elected to the Senate of

the Confederate States, and as a Senator took part in the sessions of the Confederate Congress until April, 1865. After the close of the war he returned to New Orleans to begin his professional life afresh, and formed a partnership with the late Mr. Robert Mott, a gentleman who had been for many years a prominent member of the bar of that city. The firm was in many respects fortunately constituted. Mr. Mott was a careful practitioner, a discreet adviser, and an office lawyer of merit; while Mr. Semmes was especially strong in the trial and argument of cases in court. Both were versed in the common as well as in the civil law. Many important controversies and complications arising from the war were to be settled in court, business was abundant, and the new firm was successful in a large degree. In 1879, Mr. Semmes was a member of the Constitutional Convention of Louisiana of that year, and again a member of the convention that framed the constitution of 1898. In each body he was a leader whose advice on questions of law was of commanding influence. In the midst of a large practice he took care to preserve some interests which are now and then neglected by the busy lawyer. One was his interest in the social side of life, which made him a club man of the best modern type. He was president of the Boston Club for many years. Another was his interest in legal literature of the higher sort, which he enjoyed as a student of comparative jurisprudence. Another was his interest in legal education, which induced him to devote much of his valuable time to the duties he accepted as Professor, first of the civil law, and then of the common law, in the University of Louisiana, and afterwards in Tulane University. His robust constitution and sound health enabled him to carry on his work with striking ease. Only two days before his death he remarked to the writer of this sketch that he never suffered from insomnia and never woke up with a headache.

In 1888 Mr. Semmes came near attaining what he frankly said was the chief ambition of his life, a seat on the bench of the Supreme Court of the United States. A vacancy existed

in the Fifth Circuit, and it was believed that Mr. Semmes would be appointed. Mr. Cleveland however sent in the name of Mr. Lamar, a member of his cabinet.

On the evening of Mr. Semmes' death he visited his favorite club, and at the usual hour bade his friends a cheerful good night and walked to his home, some four blocks distant. In half an hour more his gifted and cultured spirit had passed away. The shock to his friends was sudden and severe; and yet the remark was not uncommon that it was better so, in a way—better than that he should have lingered a martyr to protracted pain or slow decay.

The selection of Mr. Semmes as President of the American Bar Association was a deserved tribute to his character and his accomplishments. He was prominent as a citizen and a statesman; but he was first of all a lawyer. His early studies in logic gave him a rare method in the arraying of facts and law; in the disregard of what was accidental, and in the presentation of what was essential. He was very courteous and very frank in the discharge of his duties as an advocate, yet careful in keeping the legitimate secrets of his case and his client. And keenly as he must have felt the reverses that overtook his theories and plans in the result of the civil war, he accepted that result with the same frankness. He had no sympathy with the political pedantry that lives only in the past. And so, without any sacrifice of principle and without any vain complaint, he again took up his work, whether juristic or social, in a constructive and not in a critical spirit.

Our lamented friend was descended from a Catholic family of Maryland, and was an ardent believer in his ancestral faith. He was at all times prominent in the councils of his church, as adviser and advocate. His religion, while it was the subject of much acute analysis on its intellectual side, was not wholly dogmatic, but to dogma he added the gift of charity. He was a truly benevolent man and his benefactions were the more gracious because they never became public through any intimation of his own.

## MICHIGAN.

## NIRAM A. FLETCHER.

Niram A. Fletcher was born at Oakland, Brant County, Ontario, on February 13, 1850. He received a common school education and after teaching at Hamilton, Ontario, for two years, he removed to Grand Rapids, Michigan, in 1870, where he studied law and was admitted to practice in 1873. Since that time he had been an active practitioner in the state and federal courts. He was one of the few lawyers who found time to devote to the study of jurisprudence for its own sake, and although engaged during the last ten years of his life in nearly every important case in the state and federal courts in western Michigan, he made a thorough and systematic study of every branch of the common law, leaving valuable notes in the form of lectures as a result of his research. He was a broad, thorough, conscientious lawyer devoted to his profession in which he early took a leading place. He believed that a lawyer should devote what time he could to the public, and although he always shrank from notoriety, he never shrank from performing every duty to the community in which he lived. He held many public offices, in every one of which he did his duty well. He was one of those men who are willing to do all the work and to allow to some one else the credit, being satisfied in the consciousness of well doing.

He died on August 15, 1899, beloved by all his neighbors; everyone who knew him was a sincere mourner at his grave.

## MARTIN V. MONTGOMERY.

Martin V. Montgomery was born on a farm in the township of Eaton Rapids, Eaton County, Michigan, on the twentieth day of October, 1840. He was the son of William and Harriet Montgomery, who came to Michigan from the state of New York in 1838. His father was one of several brothers, all grown to manhood, who, with their father and mother, settled

during the years 1832 to 1838 in Eaton County on what has ever since been known as "Montgomery Plains."

Robert Montgomery, the grandfather of Martin, came, when a young man, with his wife and one son, from Enniskillen in the north of Ireland and settled in New York. The family, originally Scotch, had for several generations been settled in Ulster.

The Montgomerys were pioneers in the region of Michigan where they settled and endured the privations of a frontier life. The opportunities for education were such as the common school afforded. Books were rare, but this fact added to the zest with which the few to be had were studied.

Martin early showed signs of that mental strength and alertness and those qualities of leadership which were afterwards to distinguish him. The lessons of the school room were easy for him and he found time for much sport and no doubt for some mischief.

The natural transition of the boy in those days was from the bench in the school room to the teacher's seat, and Martin followed the custom. He taught several terms of school in his own and adjoining neighborhoods, and he has been heard to say that his experience as a teacher gave him his first really serious ideas of the importance of study and the value of an education.

Then came the war, and in August, 1861, at the age of twenty he enlisted in Company B, Second Michigan Cavalry, recruited and commanded by Judge Henry A. Shaw, in whose office young Montgomery had already commenced the study of law. The young men in the company, many of whom were from his neighborhood, desired to elect him second lieutenant, but his lack of experience and military training made him feel that he was not fitted for the responsibility and he declined to accept. He was, however, elected orderly sergeant, and filled that office with credit. He was taken sick when he had been in the service about nine months and was discharged for disability in the spring of 1862. When he had recovered his

health he resumed the study of law, this time in the office of Shaw & Crane.

On the 22d of November, 1864, he was married to Julia A. Baldwin, the daughter of a farmer in a neighboring township, who still survives him. They had but one child, a daughter, who died in infancy.

On October 5, 1865, he was admitted to the bar at Charlotte, the seat of his native county. From that day his advancement in his profession was rapid. He formed a partnership with Isaac M. Crane, in whose office he had been a student, and for the next five years the firm of Crane & Montgomery was one of the leading firms of that and the adjoining counties. In 1870 he formed a partnership with Judge David Johnson, of Jackson, formerly one of the Justices of the Supreme Court of this state, and moved to that city. His new partner was an able and upright lawyer, advanced in years and needing the assistance of just such a young, ambitious and vigorous lawyer as Montgomery.

Unfortunately, as it seemed to him at the time, the death of his father in 1872, called him back to Eaton Rapids, where he resumed his partnership with Mr. Crane and remained until 1875. In the fall of that year he removed to Lansing, Ingham County, and formed a partnership with his younger brother, Richard. This last move was hardly more than a change of office. Martin was nearly as well known in Ingham County as in the adjoining county of Eaton and the new firm quickly took a leading position at the bar. Few cases of great importance were tried in either county for the next ten years in which "M. V." as he was familiarly called was not engaged. His great strength was as a trial lawyer. The writer has heard men of experience in the profession say that for "staging" a case he excelled any lawyer they ever knew. By this they were understood to mean that he had great skill in arranging his testimony, examining his witnesses and getting the facts before the jury in the most dramatic and forcible manner. His associates often marveled at this gift which amounted

almost to genius. But like most exhibitions of genius, it was the result of careful and painstaking study of the facts of his case. Judge Montgomery told a friend once that it was his practice in important cases to write out the questions he intended to ask each witness and the answers he expected to such questions. That he frequently reframed the questions so as to put them in such form as, without being leading, would be likely to elicit the exact answer he desired. It was noticeable that he rarely asked a question too much or fell short of proving the essential facts of his case. He observed carefully the order of proofs necessary to maintain the dramatic unity of his case. The dullness of the ordinary trial was by him enlivened, so that the court, jury, and spectators were alert to see what would come next in the legal drama being acted before them. The development of the play under his skillful hand seemed to call for but one denouement—a verdict for his client,—and the jury usually completed the work he had laid out for them.

Judge Montgomery was by nature a strenuous partisan, and this quality helped him as an advocate. In a law suit his client's cause became his own, and considerations that stood in the way of his success were hard to tolerate. The other side was always in the wrong, and his client was always an honest, but deeply wronged man. For the time being he really believed this, and the whole force of his mental and physical powers was put forth to maintain it. In the heat of a trial his mind worked rapidly and with precision. He was so constantly engaged in trials, and all the details were so familiar to him, that he rarely hesitated or seemed in doubt what to do. He was not a plodding, patient student of the law. He was rather what has been termed a natural lawyer. A man not only of keen perceptions and quick wit, but one who seemed to know intuitively, and without reading from the books, the leading principles which ought to govern in a given state of facts. He differed radically from that class of lawyers who, when they are retained, begin at once to search the books

for a precedent. His method was rather to reason out the law for himself and if no cases were to be found to support his conclusions, so much the worse for the cases.

Judge Montgomery, although always a consistent Democrat, was never a politician. He had some of the natural ambition of a successful man for the supposed honors of public life, and he liked the atmosphere of it, but he had neither the time nor the disposition to court the favor of the party managers.

In 1874 he was the candidate of his party for Attorney-General of the state, but was defeated with the rest of the ticket.

In March 1885, while in the midst of a trial, he received a telegram saying that President Cleveland had tendered him the appointment of Commissioner of Patents. He concluded to accept it, and was soon installed in his new office. The duties of the position, while of course new to him, were, so far as they called for the exercise of his legal abilities, agreeable to him, and were performed with ability, but the dispensing of the patronage of the office was a disagreeable task. To escape this he accepted with pleasure the offer from President Cleveland of the position of Associate Justice of the Supreme Court of the District of Columbia, and on April 1, 1887, entered upon the duties of that office. For five years and a half he continued upon the bench of that court, winning the respect of his associates and members of the bar by his ability and industry, and endearing himself to them by his kindly courtesy. But the work was too tame for him. He sighed for the conflicts of the advocate, in which for twenty years he had been a recognized leader.

In October, 1892, he resigned his office and returned to Michigan, resuming his practice with his brother at Lansing. Soon he was in the full flow of a successful and lucrative practice, and apparently contented and happy. Soon, however, the seeds of the disease which made the last years of his life a long night of pain, began to develop; and the jovial, kindly, courteous and brilliant lawyer was obliged at last to



yield to a foe which even he could not overcome. He remained in the harness long after most men would have given up, but in the summer of 1898 he could no longer leave his house, and on the twelfth day of November, 1898, he passed away.

Judge Montgomery had an imposing presence. He was about six feet in height, straight and well proportioned. His head was large, and set upon broad shoulders.

His manner in the court room was dignified, courteous and respectful, and in social life his dignified courteousness gave way to a frank and genial friendliness, in the warm circle of which all whom he liked were welcome, and into which those whom he disliked did not venture. His temper was quick and fiery, but it was also generous and forgiving.

Although Judge Montgomery's opportunities for schooling were meager, he was far from being without education. He had acquired by the careful reading of good books a varied and substantial learning, and had become the master of a clear, terse, and vigorous style, both in writing and speaking.

In June, 1894, he was elected President of the Michigan State Bar Association and served one year. By the bar of Michigan he will be long remembered, and taken all in all they do not expect to look upon his like again.

## NEBRASKA.

### CHARLES OFFUTT.

Charles Offutt, a member of the bar of Nebraska, died at his residence, Omaha, Nebraska, November 3, 1898, at the age of forty-two years.

It is a common saying that the American Bar Association is composed of the flower of the American bar. Charles Offutt was a member of the American Bar Association, and it may be justly said of him that he was an accomplished lawyer, and stood in the front rank of his profession.

He was born near Paris, Scott County, Kentucky, October 6, 1856; attended school at Georgetown, Kentucky, and finally graduated from the Georgetown College. Of studious habits, keen perception, and an inquiring mind, together with a liberal education and habits of thought that led him to the most careful reading, he made a profound study of American and English jurisprudence, and mastered the principles of the Common Law. To him the law was a great science and a great profession.

He entered the law offices of John G. Carlisle, at Covington, Kentucky, as a student, and was admitted to the Bar of Paris, Kentucky, where he practiced his profession for about ten years, with the exception of two terms in the legislature of Kentucky, where he was twice elected Speaker of the House before he had attained the age of twenty-eight years, being the youngest man who was ever elected Speaker in that state.

Mr. Offutt is affectionately spoken of by some of his Kentucky friends as the father of the present Constitution of Kentucky, he having introduced the bill known as the Offutt Bill, for the submission to the people of the state of the new constitution, which bill was tested in the Court of Appeals of the state and sustained, while he was yet Speaker.

Desiring to practice his profession in a larger city, he selected Omaha, and removed from Paris to Omaha in the Fall of the year 1888, where he was afterwards married to Miss Bertha Yost, daughter of Casper E. Yost, (one of Omaha's foremost capitalists and business men) who, together with three children, two sons and a daughter, survive him.

Mr. Offutt was not entirely a stranger to his new home. The lustre of his record and abilities had preceded him. Joining a bar that is regarded as one of the strongest in the country, he soon rose to eminence and found a secure place in the confidence and respect of the courts, and the friendship and admiration of his brother lawyers. His statement of a case was clear, concise and forcible. His cross-examination of

a witness was keen, analytical and masterful. He possessed the rare faculty of knowing when he had completed the examination or cross-examination of a witness, and of stopping at that point. He clothed his arguments with flowers of rhetoric, but never sacrificed sense to sound. His printed briefs were models of legal acumen. He was a tireless worker. Never satisfied with citations of authorities merely, it was his habit to go back into the history of jurisprudence, and to trace through the paths of legal lore the principles for which he contended. The cause of his clients was his cause, and so partisan and loyal was he to their interests that he was ill prepared to brook opposition or to look upon his legal adversary with that calm and philosophic consideration that was, perhaps, due. He was honest in his convictions, honest with the court and with his adversary. And while in the earnestness of his efforts, he lacked at times that diplomacy which is always pleasing and flattering to opponents, yet he had in the main that chivalrous disposition that scorned to take an unfair advantage. A zealous and aggressive campaign for the maintenance of his position in behalf of his clients marked the daily labors of his professional life.

Possessed of personal courage that commanded the admiration of his associates, he found no hesitancy in joining issue with the court, when in his opinion he was thereby assailing the stronghold of error and of wrong.

Art, science and history were his recreations. His home, reflecting the very nature of the man, was a model of elegance and refinement, and here he shared his love of his profession, his books and all that appealed to the higher instincts of his nature, with his wife and family.

As a husband, father and friend, he laid strong hold upon the affections of his family, companions and associates. Moved continually by a spirit ever undaunted, he knew not weariness, but he omitted the physical exercise and recreation so necessary to a counterbalancing of his great mental labors, until the malady overtook him which resulted in his death.

It may be truly said of him that he adorned his profession, and in his death the bar has lost one of its brightest members and the state a most prominent, promising and loyal citizen.

NEW HAMPSHIRE.  
ISAAC WILLIAM SMITH.

Isaac William Smith was the son of Isaac and Mary Clark Smith and was born in Hampstead, New Hampshire, May 18, 1825. He was a lineal descendant of Samuel Smith who emigrated from England with the early settlers of Haverhill, Massachusetts. His ancestors settled in the vicinity of that town and his father finally located in Hampstead and engaged in mercantile business. In early life he showed a fondness for books and study and it was finally determined, although at a very great sacrifice in view of his father's situation, to give him a liberal education.

He fitted for college at the Phillips Andover Academy and entered Dartmouth in 1842, graduating in the class of 1846. Soon after he began the study of law with William Smith in Lowell, Massachusetts, where he remained about one year and then entered the office of Hon. Daniel Clark, afterwards United States Senator, in Manchester, New Hampshire, where he continued his legal studies until July, 1850, when he was admitted to the bar in Hillsborough County.

He was associated with Hon. Herman Foster, one of the most prominent lawyers of New Hampshire, for a time, and afterwards formed a partnership with Judge Clark, which continued some five years.

He was made a member of the city government in 1851 and 1852, and City Solicitor in 1854 and 1855, at which time he was appointed judge of the Police Court, which office he held for about two years. In 1869 he was elected Mayor of Manchester. He was also a delegate to the National Republican Convention in 1856; and in 1859 and 1860 he was a member

of the New Hampshire Legislature, and in 1862 and 1863 of the New Hampshire senate.

During all of his political experience he was characterized by great industry and conscientious attention to his official duties, served upon many of the committees and was regarded as one of the safe and influential members of the legislature. In 1863 he was appointed assessor for the Second Internal Revenue District of New Hampshire, which office he held until 1870. In 1889 he was a member of the Constitutional Convention of the state and took a very active and influential part its deliberation.

He was never a politician, but accepted the positions assigned to him by his fellow citizens and discharged his duties with the full measure of his ability and with zeal and honesty.

He was prominent in social, fraternal and religious organizations and devoted much time to the promotion of their interests. He was a member of the New Hampshire Historical Society for many years and contributed very much to its success. He was also President of the New Hampshire Bible Society and of the Congregational Club. He was a member of the Board of Trustees of Dartmouth College for several years, and a very earnest and efficient member, rendering valuable services in the interest of his Alma Mater. In 1889 that institution conferred upon him the degree of LL.D.

During all these years he was engaged in the active practice of law and devoted his business energy and ability to the discharge of his professional duties. He was regarded by his clients as a conscientious, pains-taking and wise counsellor, and enjoyed the utmost confidence of his business associates and the members of the profession, and was distinguished for his industry and close attention to his clients' interests. No one was more careful and considerate in advice and in giving his opinion upon questions of law, and his clients always had the satisfaction of knowing that they had received his best judgment and most careful deliberation.

He was appointed Associate Justice of the Supreme Judicial Court of New Hampshire, February 10, 1874, and held the office until the re-organization of the Court and the Superior Court of Judicature was established. He was then made a member of that court, where he remained until it was reorganized and the Supreme Court was established in 1870. He then received an appointment as Associate Justice, which office he retained until May 18, 1895, when by reason of the limitation of age (70 years), he was retired.

As a member of the Supreme Court, in which high position he was best known, he illustrated many of the qualities which should characterize that office.

He was an upright man and honest in every thought and purpose; no shadow or reproach were ever cast upon the "Judicial Ermine" by reason of any act or word of his. He was impartial and controlled by no fear or favor, neither by any ties of affection or friendship was he ever swerved from the path of duty and honor. In the preparation of his opinions, Judge Smith was guided by the decided cases probably more than is generally done. He believed in the doctrine of "*stare decisis*" and his labors were always directed to the examination and application of the principles of the law which he found in the reports. He believed in abiding by the old landmarks and always made the most exhaustive and persistent efforts to obtain from his own and other jurisdictions all the light possible. The amount of work which he did was truly wonderful, as will be readily conceded when it is known that during his judicial labor he prepared over five hundred opinions. As a trial justice he was particularly successful, being possessed of an even temperament and inexhaustible patience, and the members of the bar who practiced before him were always satisfied that he gave them impartial and conscientious rulings, and especially with the younger members of the bar was he justly popular for the kindness and universal courtesy with which he considered their requests. After his term of office expired he resumed the practice of his profes-

sion and being in the full possession of his mental and physical powers, anticipated, as did his friends, many years of successful and honorable labor. Business came to him rapidly and he was very soon engaged in important causes and surrounded by many of his former clients. His high character and reputation as a lawyer of experience and learning caused him to be appointed by agreement of parties and often by the court as referee or auditor in important cases, but in the midst of his new success and to the great astonishment and surprise of his friends and the community, he was suddenly stricken with disease and his career ended. On the 28th day of November, 1898, he visited one of our city banks in which he was a director and transacted some official business. He then returned to his office, which was the last known act of his life. Soon after he was found seated in his chair near his office table, his head resting upon his arm and life extinct, surrounded by his books and many papers which bore the evidence of his recent touch, where, with the address of his daughter, then living in a distant state, partly written, he had passed away.

In his home life Judge Smith was very fortunate and happy. He was united in marriage, August 16, 1864, to Amanda W., daughter of Hon. Hiram Brown, who was the first Mayor of Manchester. There were eight children born to them, seven of whom still survive. In his domestic and social life, Judge Smith was exemplary in all respects and beloved by the entire community to a remarkable degree. At his burial there were gathered with the sorrowing family and friends many of his classmates in college, his brother lawyers, the members of the court with whom he had been so long associated, the president and officers of Dartmouth College and a great number of his ardent and loving friends, and the depth of feeling and painful consciousness of loss which was expressed on that occasion by those conducting the last sad services was fully in sympathy with the heartfelt and earnest mourning of the community in which he lived. Others may have filled a larger place in the public mind, but no one has given to important trusts a larger

measure of fidelity and unspared effort ; no one has performed great duties with a purer and loftier purpose, and no one has been more devoted to our profession and its great principles of truth and justice than the subject of this sketch. The state which honored him will bear the name of Isaac W. Smith in grateful remembrance as an upright judge ; the city of his adoption will cherish his memory as that of an honorable and public spirited citizen, while his home circle and his multitude of friends will remember him as a true and faithful husband and father, and a man whose life and character were enriched with the noblest qualities of mind and heart.

## NEW YORK.

### JAMES R. CUMING.

James R. Cuming, of New York, died on the 11th day of June, 1899, deeply regretted by many friends and by the profession generally. He was of Scottish parentage, but was born, March 1, 1835, at Belfast, Ireland, to which place his father, who held a government position, had moved shortly before. Hence it came that he was a member both of the St. Andrew's Society and of St. Patrick's, of which latter he was at one time President. His parents came to New York when he was about fourteen, and he shortly after entered a law office, but his start in the profession was when the firm of Brown, Hall & Vanderpoel was formed in 1853. Beginning with that firm as a clerk, he later became a member, and his whole professional career was bound up with it and the succeeding firms of Vanderpoel, Green & Cuming and Vanderpoel, Cuming and Goodwin. This career extended over a period of more than forty-five years, during which he devoted himself particularly to real estate and to office business. It resulted from this, and his known probity, that he was greatly sought after as an executor, director and trustee, and he held many positions of trust, which he filled with great satisfaction to all



concerned. He was a devoted member of the Scottish Presbyterian Church, actively interested in many charities, and also a member of many clubs and societies.<sup>1</sup>

## OHIO.

### JULIUS C. POMERENE.

In regard to what is called "birth," Julius C. Pomerene was not a patrician, but like most other great men, he was the architect of his own fortune, doomed to toil and labor in the early part of his life, and climbing into notice and prominent position by energy and force of character.

He was born June 27, 1835, in Holmes County, Ohio, and was of French and German lineage. His grand-father, Julius Pomerene, came to America as a soldier in the army of Lafayette and participated in the glorious results which followed the advent of that army in the struggle for independence.

The early life of Julius C. Pomerene was passed upon the farm and at the age of seventeen, he entered Mt. Union College at Alliance, Ohio, where he secured his literary education. He graduated from the Ohio State and Union Law School of Cleveland, Ohio, in the year 1859. In November of the same year he began the practice of law at Coshocton, Ohio.

In 1892, he was elected judge of the Circuit Court of Ohio, and was the presiding judge in the Fifth Circuit at the time of his death, December 23, 1897.

Judge Pomerene, throughout his long legal life as a practitioner and after he went upon the bench, was a painstaking untiring and indefatigable worker at the bar and upon the bench.

He was controlled and guided in his practice as a lawyer and as a judge upon the bench, by a stern love of justice between man and man. During thirty-three years of active practice,

<sup>1</sup> A full and appreciative sketch of Mr. Cuming by the late A. Oakley Hall will be found in the "Green Bag" for October, 1899.

his unswerving devotion to the law, his untiring industry, and his pre-eminent ability, left in their wake a most enviable reputation for legal acumen and mature counsel. Thus did he plant and nourish the tree of success in the garden of fortune, which in its season of fruition gained for him a lucrative practice.

Conspicuous as were Mr. Pomerene's abilities and qualifications as a lawyer, it was reserved for him to gain his greatest distinction for legal learning as a jurist. It seemed that his whole life experience, gained upon the farm, in the school room, in the office and in the courts, were garnered into one grand reservoir of learning, from which he could readily draw to illustrate and lucidly present his opinions upon legal questions submitted for judicial determination.

By nature as well as by education, he was particularly fitted for the bench. With an equitable cast of mind, being well grounded in the principles of the law, always patient, willing to listen to argument, honest, with a conservative temperament, it was naturally expected that he would, as he did, at once take high rank on the bench and gain great distinction as a judge.

He was a strong believer in the great "common sense" rule, and always brought it to bear in the discharge of his professional duties, both at the bar and when on the bench. He was an honorable practitioner, upright in his intercourse with his associates at the bar, polite and civil to his opponent, and always deferential to the court.

## PENNSYLVANIA.

### ANDREW JOHN KAUFFMAN.

Andrew John Kauffman, son of Andrew I. and Catharine Shuman Kauffman, was born November 12, 1840, in Manor Township, Lancaster County, Pennsylvania. He was married in 1866 to Anna Fausset Bruner, daughter of Dr. Daniel I.

Bruner, of Columbia, Pennsylvania, who survives him. He died at Columbia, May 19, 1899.

Andrew I. Kauffman removed with his family in 1850 to Cumberland County. Andrew J. received his rudimentary education in the public schools and later was a student at Pennsylvania State College. Upon leaving college he went into business in Mechanicsburg, Cumberland County, but in 1862 removed to Columbia, where he studied law under Hugh M. North, and was admitted to the bar of Lancaster County, December 3, 1864 and five years later to the bar of the Supreme Court of the United States.

His home from 1862 was Columbia, where he was active in all public affairs. He was one of the projectors of the Reading and Columbia Railroad, and served as secretary of that organization from 1862 to 1866, when he became the treasurer of the Columbia and Port Deposit Railroad Company, which office he filled until the removal of the business of the road to Philadelphia.

In 1887 he was elected president of the newly formed Columbia Iron Company. In 1888 he organized the Central National Bank of Columbia, of which he was elected president, an office which he held at the time of his death. The success of this institution was in large measure owing to his capable attention to its business.

He served the borough of Columbia as Councilman and as Solicitor for many years. He was also a School Director of Columbia District and the Solicitor of the Board, and for a number of years Solicitor of the Columbia Building Association.

In May, 1882, he was appointed by President Arthur, Collector of Internal Revenue for the Ninth District of Pennsylvania, and served until July, 1885.

He was a member of Columbia Lodge, No. 286, F. and A. M.; of Corinthian Chapter, No. 224, Royal Arch Masons, and of Cyrene Commandery, No. 34, Knights Templar. He was Right Eminent Grand Commander of the Knights Templar of

the State of Pennsylvania, for the term of 1876 and 1877. For many successive years and up to the time of his death, he was District Deputy Grand Master of the F. and A. M., for Lancaster County.

He left two sons and a daughter to survive him.

In church affairs Mr. Kauffman was very active, having been a vestryman of St. Paul's, Columbia, for many years, and frequently its representative at Diocesan Conventions.

Although taking much interest in affairs outside of his profession, Mr. Kauffman was a very industrious man, and with his large acquaintance, he founded a good and lucrative practice, which continued to the time of his death. He was a man much sought after in society, for his never-ending wit and never-failing good humor made him a favorite. Of good voice and pleasing presence, his geniality was infectious; and his death has caused a void that it will be difficult to fill.

## . RHODE ISLAND.

### CHARLES BRADLEY.

Charles Bradley was the son of Charles Smith Bradley, late Chief Justice of the Supreme Court of Rhode Island. He was born in Providence, May 6, 1845, and died, at his home there, November 9, 1898. He prepared for college at the University Grammar School in Providence; then went to Williams' College, and was graduated there in the class of 1865. For a while he taught school, and then passed two years in business in Chicago, and two more years in Colorado. Returning to Providence, he studied law in the office of Bradley & Metcalf, his father's firm. He was admitted to the bar in 1874, and entered upon the successful practice of law; gradually, however, withdrawing from it after some years, as other interests occupied his time and attention. Inheriting his father's farm in Lincoln, Rhode Island, he became interested in agriculture, cattle-raising and the dairy—making

his place a model farm, to the benefit of the farmers of the State. Of wide culture and reading, he was an enthusiastic collector of books, pictures, engravings and works of art. His art treasures were made of use to the community by his generous exhibition of them in the halls of the Rhode Island School of Design and elsewhere. He took no interest in public or political life and never held any public office. His tastes were literary and domestic; and his pleasures were in his home, his children, his works of art and his farm.

He left to survive him a widow, the daughter of the late William M. Bailey, of Providence, and five children—two sons and three daughters.

## WISCONSIN.

### JOHN R. BENNETT.

John R. Bennett was born at Rodman, Jefferson County, New York, November 1, 1820, and died at Janesville, Wisconsin, on the 9th day of June, 1899. He was judge of the Twelfth Judicial Circuit of Wisconsin at the time of his death, which position he had held for eighteen years. He was born and brought up in New York, but in 1848 chose Janesville for his home. He had been admitted to the bar but a few months previously, and went there with a good common-school education, and a mind well filled with legal learning, but with empty pockets. He was in many respects an ideal character. Soon after arriving at Janesville, he impressed the community with the vigor of his intellect, with his great physical power and with his abundant good-heartedness. He soon developed into one of the strongest "all-around lawyers" in the Northwest. "He was generous to a fault" is a form frequently used in a description of men. Doubtless, in most cases where used, it is untrue, or at least exaggerated. That statement, in describing John R. Bennett, is not untrue, nor is it in the slightest degree exaggerated. This was demonstrated

in his everyday life. From the beginning of his career, he had an extensive practice in a very prosperous community. He was frequently opposed in important trials by such men as Matthew H. Carpenter, Edward G. Ryan, I. C. Sloan, James G. Jenkins, Edward V. Whiton and others, and won his full share of cases. He was a most diligent worker. He had a keen intellect, could analyze the conduct of men, could see to the bottom of the most complicated circumstances, and detect the slightest fraud when investigating the affairs of others; but it became proverbial in his community, that any one could hoodwink him out of his own money, if he threw but a slight bit of pathos into his story. In 1844 he married Elsie L. Holloway, and lived with her for nearly fifty years, she having died about six years earlier than he.

Some eighteen years before his death, Mr. Bennett was elected to the Circuit judgeship. In that position he brought to bear all of his legal learning and all of his powers of analysis; and, upon the whole, made an extremely satisfactory judge. He knew what his powers and his duties were, and he was perfectly fearless in the exercise of either. He would not knowingly permit or perpetrate what he considered an injustice. He was in all respects a grand man, a true-hearted man, a warm friend, a man true as steel. He was one of those men that, after knowing him intimately for a number of years, grows upon you; and, as time slips away and your view is that of retrospect, the faults have all faded away; and, standing out prominently, shining with the luster of countless good deeds, stands the blameless man.

#### WALTER W. JENKINS.

Walter W. Jenkins was born October 10, 1864, at Baraboo, Wisconsin, to which place his parents removed from Weymouth, England, in 1852. He spent his boyhood partly on a farm and partly in his native city and at Chippewa Falls, Wisconsin. He was educated by a full public school course,

by a law course at the University of Wisconsin, and by years of diligent self-culture; so that, without the benefits of a college education, he was possessed of most of its accomplishments, and, in addition, of that strong, practical mental development peculiar to those who are students by natural habit, and indulge such habit to a high degree, in connection with the absorbing activities of general business affairs of an important character.

His graduation from the special university course was in June, 1887; and soon thereafter, he was admitted to the bar of the Circuit Court of his circuit of the Supreme Court of his state, and of the federal courts of the district and circuit in which he lived; and, later, to the bar of the federal Supreme Court. He was a member of the Bar Association of Wisconsin, and became a member of the American Bar Association at the Cleveland meeting, in August, 1897.

He commenced the practice of his profession in 1887, with the firm of Marshall & Jenkins, at Chippewa Falls, Wisconsin, with whom he studied for several years before attending the law school. In 1889, upon the retirement of the senior member of this firm, to accept the position of circuit judge, Mr. Jenkins became the junior member of the firm of Jenkins & Jenkins. The firm succeeded to an extensive general law business, which was largely retained by the new firm through the junior member's ability, energy, industry and strict integrity, as long as his health lasted. In 1896, the senior member of the firm having been elected to Congress, the burden of their large business was cast upon Mr. Jenkins to a degree which future developments showed was far beyond his strength. He struggled under the load successfully and cheerfully, apparently gaining strength with experience; taking an active part in the political and all public affairs of his city, town and state, and giving a portion of his time daily to the keeping up of his general reading and study, till February, 1898, when, suddenly, the overtaxed mind gave way. Thereafter, till the

end, when his attention could be drawn from his condition, he remained, mentally, as active and bright as ever. But otherwise he lived in the environment of an impenetrable cloud of gloom, which grew in intensity till April 9th, 1898, when, peacefully, as one who lies down to pleasant dreams, he lay down, and, apparently resting, passed away.

As a lawyer, he stood a peer among men of his age at the bar; really, few equaled and none excelled him. Though his career was short and he commenced life's work in an humble station, with little or no aid to supplement his natural ability, yet by tireless, constant application to the work of intellectual improvement and the multitude of duties of his chosen vocation, he acquired not only a superior professional standing, but a home and fortune far beyond that of men generally in the same calling, even by the end of a long life, and left in security and assured comfort all those having claims upon his bounty.

He was universally respected and beloved by his professional associates, whose regard he won by his ever courteous and kindly treatment of them, even when standing in an adversary position.

As a citizen, he was a promoter of every good work. From him the worthy poor never turned away empty-handed, and their sufferings were to him a constant source of pain and anxiety, and of thought as to methods of alleviating them, and acts to that end. His kindness of heart was such that, however busy, when applied to for temporary relief of poverty, without regard to whether necessity or hypocrisy were behind the plea, rather than take the chance of its not being the former, he would extend relief in some effective way, as if that were a part of his general business, and then move on to other things.

He was the head of an interesting and happy family, consisting of a wife and two children, and in his family circle there was always sunshine. To it he did not take, apparently,



any of his load of care; but there exhibited at all times those qualities which tend to create and maintain an ideal home.

“ In his family home life  
He was all sunshine.  
In his face  
The very soul of sunshine showing.”

He was not a member of any church, but was a regular attendant, adherent and supporter of the Methodist Episcopal Church, and was always accounted, as the fact was, a firm believer in the Christian religion, which belief he carried into his daily life.

His last resting place is at Forest Home Cemetery, in Chippewa Falls, Wisconsin, among whose people his upright life and example will long continue to be a potent influence to stimulate the ambition, especially of young men, toward life's highest ideals.

“ The death change comes.  
Death's another life. We bow our heads  
At going out, we think, and enter straight  
Another golden chamber of the King's,  
Longer than this we leave, and lovelier.”



## LIST OF BAR ASSOCIATIONS IN THE UNITED STATES.

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NOTE.—This list has been compiled by the Secretary of the American Bar Association from replies to circulars sent out; and while pains have been taken to make it as complete as possible, it is probable that some Associations have been omitted. All Associations which are purely Library Associations are intended to be omitted. In some cases the officers for former years are given where officers for 1899 are not known.

The Secretary will be much indebted for information of any omissions and for corrections of the names of officers.

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### ALABAMA.

NAME.	PRESIDENT.	SECRETARY.
<b>Alabama State Bar Association.</b>	Joseph J. Willett, Anniston.	Alex. Troy, Montgomery.
<b>BIRMINGHAM BAR ASSOCIATION.</b>	John W. Tomlinson, Birmingham.	Lee C. Bradley, Birmingham.

### ARIZONA.

<b>The Bar Association of Arizona.</b>	A. C. Baker,	Wade H. Hulings, Phoenix.
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### ARKANSAS.

<b>The Arkansas State Bar Association.</b>	U. M. Rose, Little Rock.	D. E. Bradshaw, Little Rock.
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### CALIFORNIA.

<b>LOS ANGELES BAR ASSOCIATION.</b>	R. H. F. Variel, Los Angeles.	Charles Wellborn, Los Angeles.
<b>OAKLAND BAR ASSOCIATION.</b>	J. H. Smith, Oakland.	Geo. E. DeGolia, Oakland.
<b>SAN DIEGO BAR ASSOCIATION.</b>	Eugene Daney, San Diego.	Lewis R. Works, San Deigo.
<b>BAR ASSOCIATION OF SAN FRANCISCO.</b>	William H. Fifield, San Francisco.	William J. Herrin, San Francisco.

## COLORADO.

NAME.	PRESIDENT.	SECRETARY.
Colorado Bar Association.	Caldwell Yeaman, Denver.	Lucius W. Hoyt, Denver.
DENVER BAR ASSOCIATION.	W. H. Bryant, Denver.	H. C. Van Schaack, Denver.
GILPIN COUNTY BAR ASSOCIATION.	Clayton F. Becker, Central City.	J. D. Hurd, Central City.

## CONNECTICUT.

State Bar Association of Connecticut.	Charles E. Perkins, Hartford.	Chas. M. Joslyn, Hartford.
BRIDGEPORT BAR ASSOCIATION.	Albert M. Tallmadge, Bridgeport.	Wm. H. Kelsey, Bridgeport.
HARTFORD COUNTY BAR ASSOCIATION.	Charles E. Perkins, Hartford.	William F. Henney, Hartford.

## DELAWARE.

KENT COUNTY BAR ASSOCIATION.	H. R. Johnson, Dover.	A. M. Daily, Dover.
BAR ASSOCIATION OF NEW CASTLE COUNTY.	Willard Saulsbury, Jr., Wilmington.	Herbert H. Ward, Wilmington.
BAR ASSOCIATION OF SUSSEX COUNTY.	Charles F. Richards, Georgetown.	A. F. Polk, Georgetown.

## DISTRICT OF COLUMBIA.

Bar Association of the District of Columbia.	Samuel Maddox, Washington.	Corcoran Thom, Washington.
FEDERAL BAR ASSOCIATION OF D. C.	John W. Douglass, Washington.	George A. King, Washington.
PATENT LAW ASSOCIATION OF WASHINGTON.	William D. Baldwin, Washington.	L. Seward Bacon, Washington.

## FLORIDA.

NAME.	PRESIDENT.	SECRETARY.
JACKSONVILLE BAR ASSOCIATION.	F. P. Fleming, Jacksonville.	John L. Doggett, Jacksonville.
MARIANNA BAR ASSOCIATION.	W. H. Milton, Jr., Marianna.	J. C. McKinnon, Marianna.

## GEORGIA.

Georgia Bar Association.	Joseph R. Lamar, Augusta.	Orville A. Park, Macon.
ATLANTA BAR ASSOCIATION.	Jno. L. Hopkins, Atlanta.	W. P. Hill, Atlanta.
BAR ASSOCIATION OF CITY OF MACON.	Washington Dessan, Macon.	Andrew W. Lane, Macon.

## ILLINOIS.

Illinois State Bar Association.	Benson Wood, Effingham.	James H. Matheny, Springfield.
CHICAGO BAR ASSOCIATION.	Henry S. Towle, Chicago.	Geo. Mills Rogers, Chicago.
CHICAGO LAW INSTITUTE.	Thomas J. Holmes, Chicago.	Alfred E. Barr, Chicago.
STATES ATTORNEYS ASSOCIATION OF ILLINOIS.	Wm. H. Stead, Ottawa.	John H. Franklin, Lacon.
THE LAW CLUB OF THE CITY OF CHICAGO.	Thomas B. Marston, Chicago.	Frederic W. Burlingham, Chicago.
THE PATENT LAW ASSOCIATION.	Taylor E. Brown, Chicago.	J. W. Dyrenforth, Chicago.

## INDIANA.

State Bar Association of Indiana.	Robert S. Taylor, Fort Wayne.	Merrill Moores, Indianapolis.
ADAMS COUNTY BAR ASSOCIATION.	Robert S. Peterson, Decatur.	Clark J. Lutz, Decatur.

## INDIANA—Continued.

NAME.	PRESIDENT.	SECRETARY.
CLAY COUNTY BAR ASSO- CIATION.	George A. Knight, Brazil.	Thomas Hutchison, Brazil.
CLINTON COUNTY BAR ASSOCIATION.	Charles G. Guenther, Frankfort.	James T. Hockman, Frankfort.
DANVILLE BAR ASSOCIA- TION.	Thaddeus S. Adams, Danville.	Roscoe C. Pennington, Danville.
DEARBORN COUNTY BAR ASSOCIATION.	Wm. H. Bainbridge, Lawrenceburg.	Warren N. Hauck, Lawrenceburg.
DEKALB COUNTY BAR ASSOCIATION.	Don A. Garwood, Auburn.	Daniel A. Link, Auburn.
EVANSVILLE BAR ASSO- CIATION.	Alexander Gilchrist, Evansville.	Philip W. Frey, Evansville.
ELKHART COUNTY BAR ASSOCIATION.	Perry L. Turner, Elkhart.	George H. Fister, Elkhart.
GRANT COUNTY BAR AS- SOCIATION.	Joseph L. Custer, Marion.	Marshall Williams, Marion.
HAMILTON COUNTY BAR ASSOCIATION	John F. Neal, Noblesville.	Meade Vestal, Noblesville.
HOWARD COUNTY BAR ASSOCIATION.	Milton Bell, Kokomo.	Warren B. Voorhis, Kokomo.
INDIANAPOLIS BAR AS- SOCIATION.	Lewis C. Walker, Indianapolis.	Ernest R. Keith, Indianapolis.
JAY COUNTY BAR ASSO- CIATION.	Frank H. Snyder, Portland.	George W. Bergman, Portland.
LAKE COUNTY BAR ASSO- CIATION.	Armanus F. Knotts, Hammond.	John G. Erdlitz, Whiting.
MADISON COUNTY BAR ASSOCIATION.	Howell D. Thompson, Anderson.	Edward E. Reardon, Anderson.
MARTINSVILLE BAR AS- SOCIATION.	James V. Mitchell, Martinsville.	E. Forest Branch, Martinsville.

## INDIANA—Continued.

NAME.	PRESIDENT.	SECRETARY.
NOBLESVILLE BAR ASSO- CIATION.	John F. Neal, Noblesville.	Meade Vestal, Noblesville.
PUTNAM COUNTY BAR ASSOCIATION.	Delana E. Williamson, Greencastle.	Smith Matson, Greencastle.
SHELBY COUNTY BAR ASSOCIATION.	Harry C. Morrison, Shelbyville.	Joseph Chez, Shelbyville.
STARKE COUNTY BAR ASSOCIATION.	James W. Nichols, Knox.	W. C. Pentecost, Knox.
THIRTY-FIFTH JUDICIAL CIRCUIT BAR ASSO- CIATION.	Stephen A. Powers, Angola.	Willis Rhoads, Angola.
VERMILLION COUNTY BAR ASSOCIATION.	Martin G. Rhoads, Newport.	F. F. James, Newport.
WABASH BAR ASSOCIA- TION.	Alvah Taylor, Wabash.	Oliver H. Bogue, Wabash.

## IOWA.

Iowa State Bar As- sociation.	L. C. Blanchard, Oskaloosa.	Saml. S. Wright, Tipton.
CEDAR COUNTY BAR AS- SOCIATION.	E. M. Brink, Tipton.	Vacant.
CLAYTON COUNTY BAR ASSOCIATION.	James O. Crosby, Garnavillo.	Byron W. Newberry, Strawberry Point.
DECATUR BAR ASSOCIA- TION.	R. L. Parrish, Leon.	Stephen Varga, Leon.
DUBUQUE BAR ASSOCIA- TION.	N. E. Utt, Dubuque.	S. B. Lattner, Dubuque.
JOHNSON COUNTY BAR ASSOCIATION.	Milton Remley, Iowa City.	Ralph Howell, Iowa City.
POLK COUNTY BAR AS- SOCIATION.	Carroll Wright, Des Moines.	Robt. O. Brennan, Des Moines.
SCOTT COUNTY BAR ASSO- TION.	L. M. Fisher, Davenport.	R. C. Ficke, Davenport.

## KANSAS.

NAME.	PRESIDENT.	SECRETARY.
Bar Association of the State of Kansas.	C. C. Coleman, Clay Centre,	C. J. Brown, Topeka.

## KENTUCKY.

Kentucky Bar Association.	Malcolm Yeamans, Henderson.	J. G. Poore, Frankfort.
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## LOUISIANA.

Louisiana Bar Association.	Henry P. Dart, New Orleans.	W. S. Benedict, New Orleans.
LAW REFORM ASSOCIATION OF LOUISIANA.	Ernest T. Florance, New Orleans.	Hugues J. de la Vergne, New Orleans.

## MAINE.

Maine State Bar Association.	Wallace H. White, Lewiston.	Leslie C. Cornish, Augusta.
CUMBERLAND BAR ASSOCIATION.	Henry B. Cleaves, Portland.	John F. A. Merrill, Portland.
FRANKLIN COUNTY BAR ASSOCIATION.	Henry L. Whitcomb, Farmington.	B. M. Small, Farmington.
KENNEBEC BAR ASSOCIATION.	A. M. Spear, Gardiner.	C. L. Andrews, Augusta.
OXFORD BAR ASSOCIATION.	B. A. Frye, Bethel.	C. F. Whitman, S. Paris.
PENOBSCOT BAR ASSOCIATION.	Albert W. Paine, Bangor.	F. H. Appleton, Bangor.
SOMERSET BAR AND LAW LIBRARY ASSOCIATION.	(Oldest member present).	N. W. Brainard, Skowhegan.
YORK BAR ASSOCIATION.	Horace H. Burbank, Saco.	Gorham N. Weymouth, Biddeford.

## MARYLAND

Maryland State Bar Association.	Henry Page, Princess Anne.	Conway W. Sams, Baltimore.
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MARYLAND—Continued.

NAME.	PRESIDENT.	SECRETARY.
BAR ASSOCIATION OF AL- LEGASY COUNTY.	Robert W. McMichael, Cumberland.	David W. Sloan, Cumberland.
BAR ASSOCIATION OF BALTIMORE CITY.	John P. Poe, Baltimore.	William P. Lyons, Baltimore.
BAR ASSOCIATION OF GARRETT COUNTY.	Thos. J. Peddicord, Oakland.	Julius C. Renninger, Oakland.
BAR ASSOCIATION OF MONTGOMERY COUNTY.	Thomas Anderson, Rockville.	Philip D. Laird, Rockville.
BAR ASSOCIATION OF WASHINGTON COUNTY.	Alexander Neill, Hagerstown.	Martin L. Keedy, Hagerstown.

MASSACHUSETTS

BAR ASSOCIATION OF THE CITY OF BOSTON.	Louis S. Dabney, Boston.	William F. Wharton, Boston.
BERKSHIRE BAR ASSO- CIATION.	Henry W. Taft, Pittsfield.	Edward T. Slocum, Pittsfield.
ESSEX BAR ASSOCIATION.	Henry P. Moulton, Salem.	Alden P. White, Salem.
FALL RIVER BAR ASSO- CIATION	Milton Reed, Fall River.	Arthur S. Phillips, Fall River.
FRANKLIN COUNTY BAR ASSOCIATION.	Samuel O. Lamb, Greenfield.	Samuel D. Conant, Greenfield.
HAMPDEN BAR ASSO- CIATION.	C. L. Gardner, Springfield.	Robert O. Morris, Springfield.
HAMPSHIRE BAR ASSO- CIATION.	Timothy G. Spaulding, Northampton.	Wm. H. Clapp, Northampton.
LAWRENCE BAR ASSOCI- ATION.	Chas. A. DeCoursey, Lawrence.	Wm. F. Moyes, Lawrence.
NEW BEDFORD BAR ASSOCIATION.	Alanson Borden, New Bedford.	Frank A. Milliken, New Bedford.

## MASSACHUSETTS—Continued.

NAME.	PRESIDENT.	SECRETARY.
NEWBURYPORT BAR ASSOCIATION.	John W. Pike, Newburyport.	David P. Page, Newburyport.
BAR ASSOCIATION OF NORFOLK COUNTY.	Frederick D. Ely, Needham.	George K. Clarke, Needham.
PLYMOUTH COUNTY BAR ASSOCIATION.	B. W. Harris, E. Bridgewater.	Arthur Lord, Plymouth.
TAUNTON BAR ASSOCIATION.	Wm. H. Fox, Taunton.	Geo. Edgar Williams, Taunton.
WORCESTER COUNTY BAR ASSOCIATION.	Wm. S. B. Hopkins, ( '98 ), Worcester.	Webster Thayer, ( '98 ), Worcester.

## MICHIGAN

Michigan State Bar Association.	Bradley M. Thompson, Ann Arbor.	Arthur Brown, Ann Arbor.
BAY COUNTY BAR ASSOCIATION.	Edgar A. Cooley, Ann Arbor.	Frank S. Pratt, Bay City.
DETROIT BAR ASSOCIATION.	Don M. Dickinson, Detroit.	William J. Gray, Detroit.
HOUGHTON COUNTY BAR ASSOCIATION.	Thos. L. Chadbourne, Houghton.	R. S. Sheldon, Houghton.
IONIA COUNTY BAR ASSOCIATION.	Allen B. Morse, Ionia.	Wm. K. Clute, Ionia.
LENAWEE COUNTY BAR ASSOCIATION.	Alfred L. Millard, Adrian.	Walter S. Westerman, Adrian.
SAGINAW COUNTY BAR ASSOCIATION.	John M. Brooks, Saginaw.	Robert T. Holland, Saginaw.

## MINNESOTA.

Minnesota State Bar Association.	M. E. Clapp, St. Paul.	Carl Taylor, St. Paul.
BLUE EARTH COUNTY BAR ASSOCIATION.	A. R. Pfair, Mankota.	Jean A. Flittie, Mankota.

MINNESOTA—Continued.

NAME.	PRESIDENT.	SECRETARY.
MINNEAPOLIS BAR ASSO- CIATION.	W. H. Norris, Minneapolis.	John T. Baxter, Minneapolis.
RAMSEY COUNTY BAR ASSOCIATION.	Ambrose Tighe, St. Paul.	A. R. Moore, St. Paul.
RICE COUNTY BAR ASSO- CIATION.	Geo. W. Batchelder, Faribault.	A. D. Keyes, Faribault.
SEVENTH JUDICIAL DIS- TRICT BAR ASSOCIATION.	Alphonso Barto, St. Cloud.	Jas. R. Bennett, Jr., St. Cloud.
STEARNS COUNTY BAR ASSOCIATION.	George H. Reynolds, St. Cloud.	J. A. Martin, St. Cloud.
WASHINGTON COUNTY BAR ASSOCIATION.	F. T. Wilson, ('98), Stillwater.	A. E. Doe, ('98), Stillwater.
WINONA COUNTY BAR ASSOCIATION.	William H. Yale, Winona.	Wm. B. Anderson, Winona.

MISSISSIPPI.

ABERDEEN BAR ASSO- CIATION.	E. O. Sykes, Aberdeen.	Q. O. Eckford, Aberdeen.
COLUMBUS BAR ASSOCIA- TION.	Vacant, ('98),	Jas. T. Harrison, ('98), Columbus.
NATCHEZ BAR ASSOCIA- TION.	Wm. C. Martin, Natchez.	James A. Clinton, Natchez.
BAR ASSOCIATION OF YAZOO CITY.	Robert Bowman, Yazoo City.	C. H. Williams, Yazoo City.

MISSOURI.

Missouri Bar Asso- ciation.	George Robertson, Mexico.	J. J. Russell, Charleston.
KANSAS CITY BAR ASSO- CIATION.	H. D. Ashley, Kansas City.	Porter B. Godard, Kansas City.
BAR ASSOCIATION OF ST. LOUIS.	James Hagerman, St. Louis.	Jas. Avery Webb, St. Louis.

## MONTANA.

NAME.	PRESIDENT.	SECRETARY.
<b>Montana Bar Association.</b>	C. R. Leonard, Butte.	Edward C. Russel, Helena.
CASCADE COUNTY BAR ASSOCIATION	Thomas Brady, Great Falls.	H. H. Ewing, Great Falls.
FLATHEAD COUNTY BAR ASSOCIATION.	G. H. Grubb, Kalispell.	D. F. Smith, Kalispell.
HELENA BAR ASSOCIATION.	F. P. Sterling, Helena.	Thos. J. Walsh, Helena.

## NEBRASKA.

ADAMS COUNTY BAR ASSOCIATION.	Robert A. Batty, Hastings.	W. P. McCreary, Hastings.
LANCASTER COUNTY BAR ASSOCIATION.	H. H. Wilson, Lincoln.	S. L. Geisthardt, Lincoln.
OMAHA BAR ASSOCIATION.	Isaac E. Congdon, Omaha.	Lysle I. Abbott, Omaha.

## NEW HAMPSHIRE.

<b>Bar Association of the State of New Hampshire.</b>	Irving W. Drew, Lancaster.	Arthur H. Chase, Concord.
BELKNAP COUNTY BAR ASSOCIATION.	Ellery A. Hibbard, Laconia.	E. P. Thompson, Laconia.
CARROLL COUNTY BAR ASSOCIATION.	Frank Weeks, Centerville.	A. M. Rumery, Osipee.
GRAFTON AND COÖS BAR ASSOCIATION.	Harry Bingham, Littleton.	Geo. F. Rich, Berlin.
STRAFFORD COUNTY BAR ASSOCIATION.	Joseph H. Worcester, Rochester.	Walter W. Scott, Dover.

## NEW JERSEY.

<b>New Jersey Bar Association.</b>	Samuel H. Grey, Camden.	Albert C. Wall, Jersey City.
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## NEW JERSEY—Continued.

NAME.	PRESIDENT.	SECRETARY.
ATLANTIC COUNTY BAR ASSOCIATION.	E. A. Higbee, Atlantic City.	Wm. M. Clevenger, Atlantic City.
BERGEN COUNTY BAR ASSOCIATION.	George R. Dutton, Englewood.	Cornelius Doremus, Ridgewood.
CAMDEN COUNTY BAR ASSOCIATION.	Benjamin D. Shreve, Camden.	John Meirs, Camden.
CUMBERLAND COUNTY BAR ASSOCIATION.	Thomas W. Trenchard, Bridgeton.	Geo. Hampton, Bridgeton.
ESSEX COUNTY BAR ASSOCIATION.	William B. Guild, Newark.	Charles M. Myers, Newark.
BAR ASSOCIATION OF HUDSON COUNTY.	Chas. H. Hartshorne, Jersey City.	Henry Ewald, Jersey City.
MONMOUTH BAR ASSOCIATION.	Robt. Allen, Jr., Red Bank.	James Steen, Eatontown.
BAR ASSOCIATION OF PASSAIC COUNTY.	George S. Hilton, Paterson.	John R. Beam, Paterson.
SOMERSET COUNTY BAR ASSOCIATION.	Charles A. Reed, Plainfield.	Nelson Y. Dungan, Somerville.

## NEW MEXICO TERRITORY.

New Mexico Bar Association.	R. E. Twitchell, Las Vegas.	Edward L. Bartlett, Santa Fé.
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## NEW YORK.

New York State Bar Association.	Francis M. Finch, Ithaca.	Frederick E. Wadhams, Albany.
AMSTERDAM BAR ASSOCIATION.	Zerah S. Westbrook, Amsterdam.	Lawrence A. Serviss, Amsterdam.
BROOKLYN BAR ASSOCIATION.	H. C. M. Ingraham, Brooklyn.	Henry S. Rasquin, Brooklyn.
ERIE COUNTY BAR ASSOCIATION.	Spencer Clinton, Buffalo.	John W. Fisher, Buffalo.

## NEW YORK—Continued.

NAME.	PRESIDENT.	SECRETARY.
ASS'N OF THE BAR OF THE CITY OF NEW YORK.	John E. Parsons, New York.	B. Aymar Sands, New York.
BAR ASSOCIATION OF THE CITY OF GLOVERS- VILLE.	Jerome Egelston, Gloversville.	James H. Drury, Gloversville.
ONONDAGA COUNTY BAR ASSOCIATION.	W. P. Goodelle, Syracuse.	Edward H. Burdick, Syracuse.
QUEENS COUNTY BAR AS- SOCIATION.	John Lyon, Rockville Centre.	Frederick N. Smith, Long Island City.
ROCHESTER BAR ASSO- CIATION.	Walter S. Hubbell, Rochester.	Wm. T. Plumb, Rochester.
ROCKLAND COUNTY BAR ASSOCIATION.	Abram A. Demorest, Nyack.	George A. Wyre, Nyack.

## NORTH CAROLINA.

North Carolina Bar Association.	Charles F. Warren, Washington.	J Crawford Biggs, Durham.
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## NORTH DAKOTA.

State Bar Association of North Dakota.	Seth Newman, Fargo.	W. J. Burke, Bathgate.
GRAND FORKS COUNTY BAR ASSOCIATION.	J. H. Bosard, Grand Forks.	Tracy R. Bangs, Grand Forks.

## OHIO.

Ohio State Bar Asso- ciation.	P. A. Lanbie, Salem.	H. A. Mykrantz, Ashland.
ASHLAND COUNTY BAR ASSOCIATION.	R. M. Campbell, Ashland.	W. T. Devor, Ashland.
BUTLER COUNTY BAR ASSOCIATION.	Allen Andrews, Hamilton.	Robert N. Shotts, Hamilton.
CARROLL COUNTY BAR ASSOCIATION.	Thomas Hays, Carrollton.	U. C. DeFord, Carrollton.

## OHIO—Continued.

NAME.	PRESIDENT.	SECRETARY.
CINCINNATI BAR ASSOCIATION.	John R. Saylor, Cincinnati.	Nath'l H. Davis, Cincinnati.
CLEVELAND BAR ASSOCIATION.	E. J. Blandin, Cleveland.	T. H. Bushnell, Cleveland.
CRAWFORD COUNTY BAR ASSOCIATION.	Franklin Adams, Bucyrus.	Wallace L. Monnett, Bucyrus.
DARKE COUNTY BAR ASSOCIATION.	C. M. Anderson, Greenville.	S. V. Hartman, Greenville.
FRANKLIN COUNTY BAR ASSOCIATION.	Charles E. Barr, Columbus.	Campbell M. Voorhees, Columbus.
HENRY COUNTY BAR ASSOCIATION.	Martin Knapp, Napoleon.	J. P. Ragan, Napoleon.
JEFFERSON COUNTY BAR ASSOCIATION.	Dio. Rogers, Steubenville.	W. C. Taylor, Steubenville.
KNOX COUNTY BAR ASSOCIATION.	John Adams, Mt. Vernon.	W. L. Cary, Jr., Mt. Vernon.
LICKING COUNTY BAR ASSOCIATION.	J. M. Dennis, Newark.	Chas. W. Seward, Newark.
LORAIN COUNTY BAR ASSOCIATION.	Chas. W. Johnson, Elyria.	H. W. Ingersoll, Elyria.
MAHONING COUNTY BAR ASSOCIATION.	Thos. W. Sanderson, Youngstown.	M. C. McNabb, Youngstown.
MARION COUNTY BAR ASSOCIATION.	W. Z. Davis, Marion.	W. E. Scofield, Marion.
MIAMI COUNTY BAR ASSOCIATION.	Thos. B. Kyle, Troy.	S. H. McPherson, Troy.
MONTGOMERY COUNTY BAR ASSOCIATION.	R. D. Marshall, Dayton.	O. F. Bauman, Dayton.
PUTNAM COUNTY BAR ASSOCIATION.	Jas. T. Lentzig, Ottawa.	D. C. Long, Ottawa.

## OHIO—Continued.

NAME.	PRESIDENT.	SECRETARY.
RICHLAND COUNTY BAR ASSOCIATION.	S. G. Cummings, Mansfield.	J. E. LaDow, Mansfield.
ROSS COUNTY BAR ASSOCIATION.	Reuben R. Freeman, Chillicothe.	Frank Hinton, Chillicothe.
SANDUSKY COUNTY BAR ASSOCIATION.	T. P. Finefrock, Fremont.	Basil Meek, Fremont.
SPRINGFIELD LAW AND LAW LIBRARY ASS'N.	G. C. Rawlins, Springfield.	D. Z. Gardner, Springfield.
SOUTHERN COLUMBIANA COUNTY BAR ASS'N.	J. J. Purinton, East Liverpool.	Wm. M. Hill, East Liverpool.
SUMMIT COUNTY BAR ASSOCIATION.	C. E. Humphrey, Akron.	H. M. Hagelbarger, Akron.
TOLEDO BAR ASSOCIATION.	L. H. Pike, Toledo.	H. W. Frazer, Toledo.
VINTON COUNTY BAR ASSOCIATION.	J. M. McGillivray, McArthur.	Henry W. Coultrap, McArthur.
WARREN COUNTY BAR ASSOCIATION.	John E. Smith, Lebanon.	George W. Stanley, Lebanon.

## OREGON.

Oregon Bar Association.	L. R. Webster, Portland.	A. F. Flegel, Portland.
CLACKAMAS COUNTY BAR ASSOCIATION.	Gordon E. Hayes, Oregon City.	W. S. McRen, Oregon City.
MARION COUNTY BAR ASSOCIATION.	B. F. Bonham, Salem.	A. O. Condit, Salem.

## PENNSYLVANIA.

Pennsylvania Bar Association.	Lyman D. Gilbert, Harrisburg.	Edward P. Allinson, Philadelphia.
ADAMS COUNTY BAR ASSOCIATION.	David McConaughy, Gettysburg.	W. Clarence Sheely, Gettysburg.



## PENNSYLVANIA—Continued.

NAME.	PRESIDENT.	SECRETARY.
ALLEGHENY COUNTY BAR ASSOCIATION.	C. C. Dickey, Pittsburg.	Albert York Smith, Pittsburg.
BEAVER COUNTY LAW ASSOCIATION.	F. H. Laird, Beaver.	William S. Morrison, Beaver Falls.
BERKS COUNTY BAR AS- SOCIATION.	Jacob S. Livingood, Reading.	Thomas K. Leidy, Reading.
BLAIR COUNTY BAR AS- SOCIATION.	Adie H. Stevens, ('98), Tyrone.	Henry A. McFadden, ('98), Hollidaysburg.
BRADFORD COUNTY BAR ASSOCIATION.	Rodney A. Mercur, Towanda.	Jas. R. Leahy, Towanda.
BUCKS COUNTY BAR AS- SOCIATION.	Nathan C. James, Doylestown.	Henry O. Harris, Doylestown.
BUTLER COUNTY BAR ASSOCIATION.	L. Z. Mitchell, Butler.	J. D. Marshall, Butler.
CAMBRIA BAR ASSOCIA- TION.	W. Horace Rose, Johnstown.	M. D. Kittell, Ebensburg.
CENTRE COUNTY BAR ASSOCIATION.	John G. Love, Bellefonte.	M. I. Gardner, Bellefonte.
CHESTER COUNTY LAW AND MISCELLANEOUS LI- BRARY ASSOCIATION.	Wm. M. Hayes, West Chester.	Thomas Lack, West Chester.
CLARION BAR ASSOCIA- TION.	B. J. Reid, Clarion.	W. D. Burns, Clarion.
CLEARFIELD COUNTY LAW ASSOCIATION.	Cyrus Gordon, Clearfield.	Benjamin F. Chase, Clearfield.
COLUMBIA COUNTY BAR ASSOCIATION.	John G. Freeze, Bloomsburg.	George E. Elwell, Bloomsburg
DAUPHIN COUNTY BAR ASSOCIATION.	Robert Snodgrass, Harrisburg.	Levi B. Alricks, Harrisburg.
ERIE COUNTY LAW AS- SOCIATION.	George A. Allen, Erie.	Henry E. Fish, Erie.

## PENNSYLVANIA—Continued.

NAME.	PRESIDENT.	SECRETARY.
FAYETTE COUNTY BAR ASSOCIATION.	Robert F. Hopwood, Uniontown.	Thos. R. Wakefield, Uniontown.
FOREST BAR ASSOCIATION.	Samuel D. Irwin ('98), Tionesta.	P. M. Clark ('98), Tionesta.
HUNTINGDON BAR ASSOCIATION.	W. McK. Williamson, Huntingdon.	Jas. S. Woods, Huntingdon.
INDIANA COUNTY LAW ASSOCIATION.	J. N. Banks, Indiana.	S. J. Telford, Indiana.
JEFFERSON COUNTY BAR ASSOCIATION.	George A. Jenks, Brookville.	Cyrus H. Blood, Brookville.
LACKAWANNA LAW AND LIBRARY ASSOCIATION.	James H. Torrey, Scranton.	Herman Osthaus, Scranton.
LANCASTER BAR ASSOCIATION.	H. M. North, Columbia.	John W. Appel, Lancaster.
LAWRENCE COUNTY BAR ASSOCIATION.	C. H. Akens, Newcastle.	E. N. Baer, Newcastle.
LEHIGH COUNTY BAR ASSOCIATION.	Arthur G. De Walt, Allentown.	Frank Jacobs, Allentown.
LYCOMING LAW ASSOCIATION.	Henry C. McCormick, Williamsport.	Addison Candor, Williamsport.
McKEAN COUNTY BAR ASSOCIATION.	Byron D. Hamlin, Smethport.	George L. Roberts, Pittsburg.
MONTGOMERY COUNTY BAR ASSOCIATION.	James Boyd, Norristown.	Wm. F. Dannehower, Norristown.
NORTHAMPTON COUNTY BAR ASSOCIATION.	P. C. Evans, Easton.	A. C. LaBarre, Easton.
NORTHUMBERLAND COUNTY LAW ASSOCIATION.	Wm. H. M. Oram, Shamokin.	Harry S. Knight, Sunbury.
LAW ASSOCIATION OF PHILADELPHIA.	Samuel Dickson, Philadelphia.	William C. Ferguson, Philadelphia.

## PENNSYLVANIA—Continued.

NAME.	PRESIDENT.	SECRETARY.
LAWYERS' CLUB OF PHILADELPHIA.	Francis Shunk Brown, Philadelphia.	Emanuel Furth, Philadelphia.
SCHUYLKILL COUNTY BAR ASSOCIATION.	Geo. J. Wadlinger, Pottsville.	Chas. E. Breckens, Pottsville.
SNYDER COUNTY BAR ASSOCIATION.	A. W. Porter, Selin's Grove.	Jay G. Weiser, Middleburg.
SUSQUEHANNA COUNTY LEGAL ASSOCIATION.	William M. Post, Montrose.	F. I. Lott, Montrose.
TIOGA COUNTY BAR ASSOCIATION.	John I. Mitchell, Wellsboro.	Robert K. Young, Wellsboro.
WARREN COUNTY BAR ASSOCIATION.	William Schnur, Warren.	E. H. Beshlin, Warren.
WAYNE BAR ASSOCIATION.	Hen. Wilson, Honesdale.	R. M. Stocker, Honesdale.
WAYNESBURG LAW ASSOCIATION.	J. B. Donley, Waynesburg.	James J. Purman, Waynesburg.
WESTMORELAND LAW ASSOCIATION.	D. S. Atkinson, Greensburg.	J. E. B. Cunningham, Greensburg.
WILKES-BARRE LAW AND LIBRARY ASSOCIATION.	Alex. Farnham, Wilkes-Barre.	Joseph D. Coons, Wilkes-Barre.
WYOMING COUNTY BAR ASSOCIATION.	W. E. Little, Tunkhannock.	E. J. Jorden, Tunkhannock.

## RHODE ISLAND.

The Rhode Island Bar Association.	Francis Colwell, Providence.	Wm. A. Morgan, Providence.
PROVIDENCE BAR CLUB.	Dexter B. Potter, Providence.	Lorin M. Cook, Providence.

## SOUTH CAROLINA.

South Carolina Bar Association.	B. F. Whitner, Anderson.	John P. Thomas, Jr., Columbia.
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## SOUTH DAKOTA.

NAME.	PRESIDENT.	SECRETARY.
South Dakota Bar Association.	Coe I. Crawford, Huron.	Jno. H. Voorhees, Sioux Falls.
BEADLE COUNTY BAR ASSOCIATION.	A. W. Burtt, Huron.	(Appointed at meetings)
BROOKINGS COUNTY BAR ASSOCIATION.	George A. Mathews, Brookings.	C. P. Cheever, Brookings.
BROWN COUNTY BAR ASSOCIATION.	J. H. Hauser, Aberdeen.	C. M. Stevens. Aberdeen.
CLARK COUNTY BAR ASSOCIATION.	S. H. Elrod. Clark.	Wm. McGaan, Clark.
MINNEHAHA COUNTY BAR ASSOCIATION.	T. B. McMartin, Sioux Falls.	Jno. H. Voorhees, Sioux Falls.

## TENNESSEE.

Bar Association of Tennessee.	W. L. Welcker, Knoxville.	Chas. N. Burch, Nashville.
CHATTANOOGA BAR AND LAW LIBRARY ASSOCIATION.	R. L. Bright, Chattanooga.	A. W. Gaines, Chattanooga.
JUNIOR BAR ASSOCIATION OF LYNCHBURG.	Ray H. Parks, Lynchburg.	J. Eggleston Roby, Lynchburg.
LEWISBURG BAR ASSOCIATION.	J. L. Marshall, Lewisburg.	A. V. McLane, Lewisburg.
MEMPHIS BAR AND LAW LIBRARY ASSOCIATION.	Wm. M. Randolph, Memphis.	E. A. Cole, Memphis.
MURFREESBORO BAR ASSOCIATION.	Fletcher R. Burrus, Murfreesboro.	Jesse W. Sparks, Murfreesboro.
WINCHESTER BAR ASSOCIATION.	W. H. Brannan, Winchester.	Arthur Crownover, Winchester.

## TEXAS.

NAME.	PRESIDENT.	SECRETARY.
<b>Texas Bar Association.</b>	Presley K. Ewing, Houston.	Chas. S. Morse, Austin.
<b>AUSTIN BAR ASSOCIATION.</b>	John Dowell, Austin.	J. W. Maxwell, Austin.
<b>DALLAS BAR ASSOCIATION.</b>	W. B. Gano, Dallas.	Wendell Spence, Dallas.

## UTAH.

<b>State Bar Association of Utah.</b>	Chas. S. Varian, Salt Lake City.	Cleson S. Kinney, Salt Lake City.
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## VERMONT.

<b>Vermont Bar Association.</b>	Charles H. Darling, Bennington.	Geo. W. Wing, Montpelier.
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## VIRGINIA.

<b>Virginia State Bar Association.</b>	Wm. J. Leake, Richmond.	Eugene C. Massie, Richmond.
<b>BAR ASSOCIATION OF THE CITY OF RICHMOND.</b>	Jas. Lewis Anderson, Richmond.	John Stewart Bryan, Richmond.

## WASHINGTON.

<b>Washington State Bar Association.</b>	George Donworth, Seattle.	Nathan S. Porter, Olympia.
<b>CHEHALIS COUNTY BAR ASSOCIATION.</b>	C.W. Hodgson, V. P., Montesano.	J. A. Hutcheson, Chehalis.
<b>KING COUNTY BAR ASSOCIATION.</b>	Orange Jacobs ('98), Seattle.	John Arthur ('98), Seattle.
<b>PIERCE COUNTY BAR ASSOCIATION.</b>	Wm. C. Sharpstine, Tacoma.	Marshall K. Snell, Tacoma.
<b>SKAGIT COUNTY BAR ASSOCIATION.</b>	E. C. Million, Mt. Vernon.	E. P. Barker, Mt. Vernon.
<b>SPOKANE COUNTY BAR ASSOCIATION.</b>	Geo. W. Belt, Spokane.	Leonard B. Cornell, Spokane.

726 LIST OF BAR ASSOCIATIONS IN THE UNITED STATES.

WASHINGTON—Continued.

NAME.	PRESIDENT.	SECRETARY.
THURSTON COUNTY BAR ASSOCIATION.	Nathan S. Porter, Olympia.	Preston M. Troy, Olympia.
WHATCOM COUNTY BAR ASSOCIATION.	Albert S. Cole, New Whatcom.	Lin H. Hadley, New Whatcom.

WEST VIRGINIA.

West Virginia Bar Association.	L. J. Williams, Lewisburg.	John W. Davis, Clarksburg.
MASON COUNTY BAR ASSOCIATION.	W. R. Gunn, Point Pleasant.	E. J. Somerville, Point Pleasant.
OHIO COUNTY BAR ASSOCIATION.	Geo. B. Caldwell, Wheeling.	Vacant.

WISCONSIN.

State Bar Association of Wisconsin.	Edwin E. Bryant, Madison.	Cornelius I. Haring, Milwaukee.
DANE COUNTY LEGAL ASSOCIATION.	J. H. Carpenter, Madison.	John A. Aylward, Madison.
EAU CLAIRE COUNTY BAR ASSOCIATION.	T. F. Frawley, Eau Claire.	Fred. A. Teall, Eau Claire.
LA CROSSE BAR ASSOCIATION.	J. W. Losey, La Crosse.	John Brindley, La Crosse.
MILWAUKEE BAR ASSOCIATION.	Frederick C. Winkler, Milwaukee.	Cornelius I. Haring, Milwaukee.
ROCK COUNTY BAR ASSOCIATION.	William Smith, Janesville.	Emmett D. McGowan, Janesville.
WAUPACA COUNTY BAR ASSOCIATION.	F. M. Guernsey, Clintonville.	Irving P. Lord, Waupaca.
WINNEBAGO COUNTY BAR ASSOCIATION.	Geo. Gary, Oshkosh.	A. H. Goss, Oshkosh.

## MEMORANDUM OF SUBJECTS REFERRED TO COMMITTEES.

### STANDING COMMITTEES.

#### *Jurisprudence and Law Reform.*

Fellow Servants. (See 1896 Report, page 40.)

Slipshod Legislation. (See 1896 Report, pages 41 and 42; 1897 Report, page 67.)

Consideration of certain phases of anti-trust legislation. (See 1897 Report, page 72.)

No report in 1898 or 1899. (See 1898 Report, page 13; 1899 Report, page 23.)

Torts on the High Seas. (See page 28.)

Revision of U. S. Statutes. (See page 84.)

#### *Commercial Law.*

Further investigation of working of Bankrupt Law. (See pages 414 and 25.)

#### *International Law.*

To bring to the attention of President and Senate the Resolution as to Hague Conference. (See page 86.)

#### *Obituaries.*

To report names of deceased members. (See 1898 Report, page 20.)

### SPECIAL COMMITTEES.

#### *On Classification of the Law.*

No Report in 1898 or 1899. (See pages 32 and 58.)

#### *On Indian Legislation.*

No report in 1898 or 1899. (See pages 33 and 58, and 1896 Report, pages 18 and 19.)

*On Uniform State Laws.*

The securing of the appointment by states of Commissioners on Uniform State Laws. (See pages 458, 33 and 58.)

*On Federal Code of Criminal Procedure.*

No Report in 1899. (See pages 33 and 59.)

*On Penal Laws and Prison Discipline.*

Committee on Parole and Indeterminate Sentences continued with title changed as above, and to make further investigation and report. (See pages 461, 34 and 59.)

*On Federal Courts.*

Committee continued and directed to co-operate with the Commission appointed by Congress. (See pages 462, 34 and 59.)

*On Appeals from Orders Appointing Receivers.*

Committee continued. (See page 34.)

*On Industrial Property and International Negotiation.*

Committee continued and to report further. (See page 48.)

*On Title to Real Estate.*

To memorialize Congress and urge proper remedial legislation. (See pages 487, and 48 to 58.)

*On John Marshall Day.*

To prepare an address and suggestions for observance; and to memorialize the President and Congress. (See pages 490, 12 to 18, 21, 60 and 85.)



## ANNUAL ADDRESSES.

YEAR.	NAME	SUBJECT.
1879.	EDWARD J. PHELPS, . . . . .	John Marshall.
1880.	CORTLANDT PARKER, . . . . .	Alexander Hamilton and William Paterson.
1881.	CLARKSON N. POTTER, . . . . .	Roger Brooke Taney.
1882.	ALEXANDER R. LAWTON, . . . . .	James Lewis Petigru and Hugh Swinton Legaré.
1883.	JOHN W. STEVENSON, . . . . .	James Madison.
1884.	JOHN F. DILLON, . . . . .	American Institutions and Laws.
1885.	GEORGE W. BIDDLE, . . . . .	An Inquiry into the Proper Mode of Trial.
1886.	THOMAS J. SEMMES, . . . . .	The Civil Law and Codification.
1887.	HENRY HITCHCOCK, . . . . .	General Corporation Laws.
1888.	GEORGE HOADLY, . . . . .	Codification.
1889.	SIMEON E. BALDWIN, . . . . .	The Centenary of Modern Government.
1890.	JAMES C. CARTER, . . . . .	The Ideal and the Actual in the Law.
1891.	ALFRED RUSSELL, . . . . .	Avoidable Causes of Delay and Uncertainty in our Courts.
1892.	J. RANDOLPH TUCKER, . . . . .	British Institutions and American Constitutions.
1893.	HENRY B. BROWN, . . . . .	The Distribution of Property.
1894.	MOORFIELD STOREY, . . . . .	The American Legislature.
1895.	WILLIAM H. TAFT, . . . . .	Recent Criticism of the Federal Judiciary.
1896.	LORD RUSSELL OF KILLOWEN, Lord Chief Justice of England,	International Law and Arbitration.
1897.	JOHN W. GRIGGS, . . . . .	Lawmaking.
1898.	JOSEPH H. CHOATE, . . . . .	Trial by Jury.
1899.	WILLIAM LINDSAY, . . . . .	Power of the United States to Acquire and Govern Foreign Territory.

## PAPERS READ.

YEAR.	NAME.	SUBJECT.
1879.	CALVIN G. CHILD, . . . . .	Shifting Uses, from the Standpoint of the Nineteenth Century.
1879.	HENRY HITCHCOCK, . . . . .	The Inviolability of Telegrams.
1879.	GEORGE A. MERCER, . . . . .	The Relationship of Law and National Spirit.
1880.	HENRY E. YOUNG, . . . . .	Sunday Laws.
1880	GEORGE TUCKER BISPHAM, . .	Rights of Material Men and Em- ployees of Railroad Companies as against Mortgagees.
1880.	HENRY D. HYDE, . . . . .	Extradition between the States.
1881.	THOMAS M. COOLEY, . . . . .	The Recording Laws of the United States.
1881.	SAMUEL WAGNER, . . . . .	The Advantages of a National Bankrupt Law.
1882.	GUSTAVE KOERNER, . . . . .	The Doctrine of Punitive Damages and its Effect on the Ethics of the Profession.
1882.	U. M. ROSE, . . . . .	Titles of Statutes.
1882.	THOMAS J. SEMMES, . . . . .	The Civil Law as Transplanted in Louisiana.
1883.	ROBERT G. STREET, . . . . .	How far Questions of Public Pol- icy may enter into Judicial Decisions.
1883.	JOHN M. SHIRLEY, . . . . .	The Future of our Profession.
1883.	SIMEON E. BALDWIN, . . . . .	Preliminary Examinations in Criminal Proceedings.
1883.	SEYMOUR D. THOMPSON, . . .	Abuses of the Writ of Habeas Corpus.
1884	ANDREW ALLISON, . . . . .	The Rise and Probable Decline of Private Corporations in America.
1884.	M. DWIGHT COLLIER, . . . . .	Stock Dividends and their Re- straint.
1884.	SIMON STERNE, . . . . .	The Prevention of Defective and Slipshod Legislation.

YEAR.	NAME.	SUBJECT.
1885.	RICHARD M. VENABLE, . . . .	Partition of Powers between the Federal and State Governments.
1885.	REUBEN C. BENTON, . . . .	The Distinction between Legislative and Judicial Functions.
1885.	FRANCIS RAWLE, . . . . .	Car Trust Securities.
1886.	JOHNSON T. PLATT, . . . . .	The Opportunity for the Development of Jurisprudence in the United States.
1886.	WILLIAM P. WELLS, . . . . .	The Dartmouth College Case and Private Corporations.
1886.	JOHN F. DILLON, . . . . .	Law Reports and Law Reporting.
1887.	HENRY JACKSON, . . . . .	Indemnity the Essence of Insurance; Causes and Consequences of Legislation qualifying this Principle.
1887.	JAMES K. EDSALL, . . . . .	The Granger Cases and the Police Power.
1888.	J. RANDOLPH TUCKER, . . . .	Congressional Power over Interstate Commerce.
1888.	J. M. WOOLWORTH, . . . . .	Jurisprudence Considered as a Branch of the Social Science.
1889.	HENRY B. BROWN, . . . . .	Judicial Independence.
1889.	WALTER B. HILL, . . . . .	The Federal Judicial System.
1890.	HENRY C. TOMPKINS, . . . . .	The Necessity for Uniformity in the Laws Governing Commercial Paper.
1890.	DWIGHT H. OLMSTEAD, . . . .	Land Transfer Reform.
1890.	JOHN F. DUNCOMBE, . . . . .	Election Laws.
1891.	FREDERICK N. JUDSON, . . . .	Liberty of Contract under the Police Power.
1891.	W. B. HORNBLOWER, . . . . .	The Legal Status of the Indian.
1892.	JOHN W. CARY, . . . . .	Limitations of the Legislative Power in Respect to Personal Rights and Private Property.
1892.	WILLIAM L. SNYDER, . . . . .	The Problem of Uniform Legislation.
1893.	HENRY WADE ROGERS, . . . . .	The Treaty-Making Power.
1893.	W. W. MCFARLAND, . . . . .	The Evolution of Jurisprudence.
1893.	U. M. ROSE, . . . . .	Trusts and Strikes.

YEAR.	NAME.	SUBJECT.
1894.	HAMPTON L. CARSON, . . . .	Great Dissenting Opinions.
1894.	CHARLES CLAFLIN ALLEN, . .	Injunction and Organized Labor.
1895.	WILLIAM WIRT HOWE, . . . .	Historical Relation of the Roman Law to the Law of England.
1895.	RICHARD WAYNE PARKER, . .	The Tyrannies of Free Govern- ment, or the Modern Scope of Constitutional Guarantees of Liberty and Property.
1896.	JAMES M. WOOLWORTH, . . . .	The Development of the Law of Contracts.
1896.	JOSEPH B. WARNER, . . . . .	The Responsibilities of the Law- yer.
1896.	MONTAGUE CRACKANTHORPE, of the English Bar, . . . . .	The Uses of Legal History.
1897.	ROBERT MATHER, . . . . .	Constitutional Construction and the Commerce Clause.
1897.	EUGENE WAMBAUGH, . . . . .	The Present Scope of Govern- ment.
1898.	LYMAN D. BREWSTER, . . . .	Uniform State Laws.
1898.	L. C. KRAUTHOFF, . . . . .	Malice as an Ingredient of a Civil Cause of Action.
1899.	EDWARD Q. KEASBEY, . . . .	New Jersey and the Great Corpo- rations.
1899.	SIR WM. RANN KENNEDY, Judge of the English High Court, . . . . .	The State Punishment of Crime.

## SECTION OF LEGAL EDUCATION.

YEAR.	NAME.	SUBJECT.
1893.	AUSTIN ABBOTT, . . . . .	Existing Questions of Legal Education.
1893.	SAMUEL WILLISTON, . . . . .	Legal Education.
1893.	EMLIN MCCLAIN, . . . . .	The Best Method of Using Cases in Teaching Law.
1894.	HENRY WADE ROGERS, Ch'rm'n,	Annual Address as Chairman.
1894.	JOHN F. DILLON, . . . . .	The True Professional Ideal.
1894.	JOHN D. LAWSON, . . . . .	Some Standards of Legal Education in the West.
1894.	SIMEON E. BALDWIN, . . . . .	Law School Libraries, and How to Use Them.
1894.	WOODROW WILSON, . . . . .	Legal Education of Undergraduates.
1894.	JOHN H. WIGMORE, . . . . .	A Principal of Orthodox Legal Education.
1894.	EDMUND WETMORE, . . . . .	Some of the Limitations and Requirements of Legal Education in the United States.
1894.	WILLIAM A. KEENER, . . . . .	The Inductive Method in Legal Education.
1895.	JAMES B. THAYER, . . . . .	Address as Chairman on The Teaching of English Law at Universities.
1895.	ERNEST W. HUFFCUT, . . . . .	The Relation of the Law School to the University.
1895.	DAVID J. BREWER, . . . . .	A Better Education the Great Need of the Profession.
1895.	LYMAN ABBOTT, . . . . .	The Relation of Law to Our National Development.
1895.	NATHAN S. DAVIS, . . . . .	The Importance of the Study of Medical Jurisprudence by Students of Law, and the Extent to which it should be Taught in Schools and Colleges for the Education of such Students.

YEAR.	NAME.	SUBJECT.
1896.	EMLIN MCCLAIN, . . . . .	Address as Chairman, on The Law Curriculum.
1896.	CHARLES M. CAMPBELL, . . .	The Necessity and Importance of the Study of Common-Law Procedure in Legal Education.
1896.	BLEWETT LEE, . . . . .	Teaching Practice in Law Schools.
1896.	JAMES FAIRBANKS COLBY, . . .	The Collegiate Study of Law.
1896.	AUSTEN G. FOX, . . . . .	Two Years' Experience of the New York State Board of Law Examiners.
1896.	J. W. POWELL, . . . . .	On Primitive Institutions.
1896.	JOHN RANDOLPH TUCKER, . . .	What is the Best Training for the American Bar of the Future.
1896.	GEORGE HENRY EMMOTT, . . .	Legal Education in England.
1897.	HENRY E. DAVIS, . . . . .	Primitive Legal Conceptions in Relation to Modern Law.
1897.	JOHN A. FINCH, . . . . .	The Law of Insurance in the Law School.
1897.	CHARLES NOBLE GREGORY, . .	The Wage of the Law Teachers.
1898.	SIMEON E. BALDWIN, . . . . .	Address as Chairman, on The Re-Adjustment of the Collegiate to the Professional Course.
1898.	EDWARD A. HARRIMAN, . . .	Educational Franchises.
1898.	CHARLES W. NEEDHAM, . . .	Schools of Law: The Subjects, Order and Method of Study.
1899.	WILLIAM WIRT HOWE, . . . .	Address as Chairman, on The Study of Comparative Jurisprudence.
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